

## TAGADAB BUSINESS TERMS AND CONDITIONS

This Agreement is made between Tagadab Limited (“Tagadab”) and the Customer (“Customer”) for the provision of Services in accordance with the following Business Terms and Conditions.

### 1. DEFINITIONS

1.1 In this Agreement, the following words and phrases shall, unless the context otherwise requires have the following meanings:-

1.1.1 “**Acceptable Use Policy**” means Tagadab’s Acceptable Use Policy, the current version of which is available on the Tagadab Website, as amended from time to time;

1.1.2 “**Agreement**” has the meaning set out in Clause 2.1;

1.1.3 “**Cancellation Fee**” means those fees set out in clause 3;

1.1.4 “**Tagadab**” means Tagadab Limited of 21 Southampton Row, London WC1B 5HA;

1.1.5 “**Tagadab Equipment**” means any hardware, cabling, peripherals, software or any other equipment that Tagadab shall provide the Customer as part of the Services, whether owned by Tagadab or a third party supplier but specifically excludes equipment that has been sold outright to the Customer;

1.1.6 “**Tagadab Website**” means the website operated by Tagadab currently at URL [www.tagadab.com](http://www.tagadab.com) (as such URL may change from time to time);

1.1.7 “**Commencement Date**” means the date the services are successfully delivered;

1.1.8 “**Confidential Information**” means all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives or advisers (together its **Representatives**) to the other party and that party’s Representatives in connection with this Agreement including any information relating to the business, affairs, customers, clients and suppliers of the disclosing party (or of any Group Company of the disclosing party) and any information relating to the services, product information, know-how, designs, trade secrets or software of the disclosing party (or of any Group Company of the disclosing party);

1.1.9 “**Customer**” means the person, group of people, or company, who receive the Service from Tagadab under the terms of this Agreement, as identified in the Order Form;

1.1.10 “**Customer Equipment**” means any hardware, cabling, peripherals, software or any other equipment that the Customer owns and uses as part of the Services;

1.1.11 “**Fees**” means the fees and charges payable by the Customer for the use of the Services and all other fees and charges payable by the Customer to Tagadab in accordance with this Agreement;

- 1.1.12 “**Force Majeure Event**” means any circumstances beyond the reasonable control of either party to this Agreement including but not limited to adverse natural events such as fire, storm, flood and extreme weather conditions; the outbreak of hostilities, riot, civil disorder or commotion; acts of terrorism; industrial disputes or acts or defaults of any local or central government or other competent authority;
- 1.1.13 “**Group Company**” means any holding company or subsidiary of either party to this Agreement, or any subsidiary of any such holding company as such terms are defined in section 736 Companies Act 1985 (as amended);
- 1.1.14 “**Initial Period**” means 12 months from the Services Commencement Date, or such other period as set out in the Order Form;
- 1.1.15 “**Minimum Written Notice**” means the period of written notice to be given by the Customer to Tagadab in order to terminate the provision of the Services being:-
- (a) 30 days.
- 1.1.16 “**Order Acceptance Form**” means the form which the Customer is sent when Tagadab accepts the Customer’s offer to provide the Services;
- 1.1.17 “**Order Form**” means the form(s) (as amended by Tagadab from time to time) which lists the Services requested by the Customer;
- 1.1.18 “**Renewal Period**” means the period of 12 months commencing on the expiry of the Initial Period, and each successive period of 12 months thereafter (or such other period as is set out in the Order Form) (each being a “Renewal Period”);
- 1.1.19 “**Service Deliverables**” means any materials, equipment, software, deliverables or other items of any type developed, created or supplied (whether alone or jointly) by Tagadab or any Tagadab Group Company in the course of the provision of the Services;
- 1.1.20 “**Service Description**” means the description of the Services, which if appended to this Agreement, forms a part of it;
- 1.1.21 “**Service**” means a service set out in the Order Form and/or the Service Description, to be provided by Tagadab to the Customer pursuant to this Agreement;
- 1.1.22 “**Service Commencement Date**” means the date on which a Service is successfully installed;
- 1.1.23 “**Service Term**” means, in relation to each of the Services, the period from the Service Commencement Date to the expiry or termination (for any reason) of the Services pursuant to this Agreement;
- 1.1.24 “**SLA**” means the service level agreement applicable to the Service;
- 1.1.25 “**Target Installation Date**” means the estimated date provided by Tagadab or any third party supplier for the installation of the Service;

- 1.1.26 “**Terms and Conditions**” means these terms and conditions;
  - 1.1.27 “**Working Day**” means 09.00 to 17.30, Monday to Friday excluding UK Public Holidays.
- 1.2 In this Agreement, unless the context otherwise requires:
- 1.2.1 clause, schedule and paragraph headings shall not affect the interpretation of this Agreement;
  - 1.2.2 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
  - 1.2.3 words in the singular shall include the plural and vice versa;
  - 1.2.4 a reference to one gender shall include a reference to the other gender;
  - 1.2.5 a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment;
  - 1.2.6 a reference to “writing” or “written” includes mail, faxes and e-mail;
  - 1.2.7 any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what most nearly approximates to the English legal term in that jurisdiction; and
  - 1.2.8 any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 2. THE AGREEMENT**
- 2.1 This Agreement consists of these Terms and Conditions, Order Form and Acceptable Use Policy and if applicable SLA and Service Description. The terms of this Agreement refer to the Service which the Customer has requested and Tagadab has agreed to provide in accordance with the procedure set out in Clause 3.1.
- 2.2 Any conflict or inconsistency between any provisions of the documents referred to in Clause 2.1 shall be resolved in accordance with the following order of precedence:
- 2.2.1 Order Form;
  - 2.2.2 Service Description;
  - 2.2.3 SLA;
  - 2.2.4 Terms and Conditions;
  - 2.2.5 Acceptable Use Policy.
- 2.3 This Agreement shall take effect on the Commencement Date and shall continue unless and until terminated in accordance with the provisions of Clause 8.

- 2.4 Tagadab may make any changes to this Agreement (including to these Terms and Conditions, any Order Form, Service Description and any SLA) as it deems necessary from time to time to take into account operational and technical matters (including the terms on which its third party providers provide Tagadab with services) and changes to any applicable laws and regulations. Such changes shall be notified to the Customer by posting the changes to the Tagadab Website and shall be deemed to be incorporated into this Agreement and be legally binding on the parties with effect from the date such posting is made. Tagadab will endeavour to give 30 Working Days' notice of any such changes but any failure to give such notice shall not act to prevent such changes having full contractual effect.

### **3. ORDERING AND PROVISION OF SERVICES**

- 3.1 During the Term, the Customer may request Services from Tagadab in accordance with the following procedure:-
- 3.1.1 The Customer shall request by signing and submitting an Order Form in respect of such Services. The Order Form shall constitute a written offer by the Customer to enter into a legally binding contract with Tagadab for the provision of such Services and such offer shall remain valid for a period of 14 days from the date of that the Order Form is submitted to Tagadab;
- 3.1.2 If Tagadab declines to accept any Order Form submitted by the Customer, it shall notify the Customer of its decision after receiving the Order Form, as soon as reasonably practicable thereafter and not longer than within 14 calendar days;
- 3.1.3 If Tagadab agrees to accept the Order Form, Tagadab shall send an Order Acceptance Form by way of confirmation to the Customer and shall be obliged to provide and the Customer shall be obliged to accept the provision of the Services, subject always to the provisions of this Agreement;
- 3.2 The Customer will not be entitled to alter or change the Services during the Services Term without the prior written agreement of Tagadab. Any such alteration may be subject to the payment of additional Fees as determined by Tagadab.
- 3.3 Tagadab will use all reasonable endeavours to comply with the Customer's requests in relation to the installation of the Services. However, Tagadab's decisions relating to the availability of the Services (or part thereof) will be final and binding.
- 3.4 Tagadab will endeavour to install the Services in accordance with the Target Installation Date. However, Tagadab shall not be liable for any failure to meet such dates as all dates referred to in relation to the Target Installation Date and the Service Commencement Date are estimates.
- 3.5 If required by Tagadab, the Customer shall prepare the Premises in accordance with Tagadab's instructions and provide Tagadab (or its third party suppliers) with reasonable access to the Premises at times to be agreed.
- 3.6 At any time during the Services Term, Tagadab has the right to upgrade Customers to a different level of service if, in the opinion of Tagadab, the existing Services being provided to the Customer are or become inappropriate or insufficient to meet the Customer's requirements and as a result Tagadab considers the Customer requires different Services which are more appropriate to the Customer's usage pattern or

needs. Tagadab will consult with the Customer if Tagadab wishes to exercise its rights under this Clause.

3.6.1 If the Customer agrees to change the Services in accordance with Tagadab's recommendation, the Customer may be liable for the higher fees and costs associated with the upgraded Services and any termination or cancellation fees associated with the terminated Services.

3.6.2 If the Customer does not agree to the upgraded Services, Tagadab shall be entitled to terminate the provision of the existing Services on providing 30 days notice in writing. In the event that the Customer chooses not the upgrade and Tagadab allows the Customer to continue using the existing Services, any applicable SLA ceases to apply.

3.7 Tagadab may from time to time give directions about the use of the Services to the Customer which Tagadab thinks is reasonably necessary in the interests of safety or the quality of service to Tagadab's other customers. The Customer shall comply with all such directions.

3.8 As part of its Service offering Tagadab may have to move the location of certain Tagadab and/or Customer Equipment. The Customer agrees that upon receipt of prior notice from Tagadab, Tagadab shall be free to move the Equipment as it sees fit and wherever possible Tagadab will endeavour to minimise any adverse impact on the Services. All costs and expenses incurred in connection with such relocation of the Equipment shall be borne by Tagadab.

3.9 Tagadab reserves the right to alter any third party suppliers used to supply the Services.

3.10 The Customer may cancel the Services in full prior to the Target Installation Date by providing prior written notice to Tagadab subject to the payment of the Cancellation Fee set out in clause 3.11 below.

3.11 If the Customer terminates the Services before the Target Installation Date in accordance with 3.10 the Customer must pay the Cancellation Fee to Tagadab calculated as follows:

3.11.1 Where notice is given 30 Working Days' or more prior to the Target Installation Date: 25% of that Service's total contract value;

3.11.2 Where notice is given between 10 Working Days and 30 Working Days prior to the Target Installation Date: 80% of that Service's total contract value;

3.11.3 Where notice is given less than 10 Working Days prior to the Target Installation Date: 100% of that Service's total contract value.

## 4. CUSTOMER OBLIGATIONS

4.1 It is a condition of this Agreement that the Customer shall at all times use the Services in accordance with the Acceptable Use Policy.

4.2 The Customer shall not, nor knowingly permit any other person to, use the Services:

- 4.2.1 to send, knowingly receive, upload, download, display or use any material which:
- (a) is abusive, indecent, obscene, defamatory, racist, offensive, menacing or infringing of any obligation as to confidential information or copyright or any other Intellectual Property Rights;
  - (b) contains unlawful security devices, viruses, worms, trojan horses or similar;
  - (c) contravenes any laws or regulations; or
  - (d) which may harm or damage the Tagadab network;
- 4.2.2 in connection with the carrying out of fraud or other criminal offence;
- 4.2.3 to send unsolicited advertising or mail shots of any kind in breach of the Privacy and Electronic Communications Regulations 2003 (or any equivalent regulations);
- 4.2.4 in a way which does not comply with instructions given by Tagadab or its agents or contractors.
- 4.3 The Customer will have 2 Working Days from the Services Commencement Date in which to notify Tagadab of any defects in the installation or the operation of the Service. Unless the Customer provides such notification within that period, the Services will be deemed to have been provided correctly. If the Customer notifies Tagadab of any such defect, Tagadab will use its reasonable endeavours to fix such defect and the Customer shall provide Tagadab (or its third party supplier) with reasonable assistance or access to the premises. Failure to provide Tagadab with reasonable assistance or access to the premises may result in invoicing commencing before the defect has been rectified. The provisions of this paragraph shall apply to any re-installation of the Services and the Service Commencement Date will be amended accordingly. Once acceptance of the Services has been deemed to have been given by the Customer, invoicing will commence from the Service Commencement Date.
- 4.4 Without prejudice to its other rights and remedies, Tagadab will be entitled to suspend the Services and/or terminate the Agreement if Tagadab in its sole discretion believes or has reason to believe that the Customer is in breach of any provision of this Clause 4.
- 5. FEES FOR THE SERVICES**
- 5.1 Tagadab shall provide a valid VAT invoice to the Customer for all Fees. The Customer shall pay to Tagadab the Fees for the Services in the amount and on the basis specified in the Order Form(s). Save as expressly set out in the Order Form(s) all invoices issued by Tagadab under this Agreement shall be paid by the Customer in cleared funds within 14 calendar days of the date of invoice. Where more than one Service is included on any Order Form, Tagadab may invoice for each of the Services separately.
- 5.2 The Services may be subject to installation site surveys. Additional installation charges may arise as a result of such surveys ("**Additional Charges**"). We will notify you of Additional Charges applicable to your Service as soon as is practicable. If we receive survey results giving rise to Additional Charges for your Service after sending your

Order Acceptance Form, we will notify you of these Additional Charges. You may cancel the Services in the Order Form without penalty if you notify us in writing within 10 days of the date of our notice of the Additional Charges. If we do not receive notice from you within that time, the Additional Charges will be added to the price set out in this Order Form.

5.3 Tagadab may alter the amount of, or payment terms relating to, the Fees at any time during the Term for the following reasons:

5.3.1 to take account of any increase in the costs incurred by Tagadab in the provision of the Services (including any increase in the costs or charges of any third party supplier or licensor to Tagadab);

5.3.2 to pass on any additional charges or fees imposed by any third party supplier or licensor to Tagadab at any time.

Tagadab shall notify the Customer in writing of any such alteration (either increase or decrease) and shall endeavour to give the Customer 30 days' prior notice of such charge.

5.4 The Fees are not refundable in any circumstances, except where expressly stated otherwise in this Agreement. If the Customer terminates the Services, Tagadab will not refund Fees paid in advance by the Customer save where the provision of the Services by Tagadab or this Agreement is terminated by the Customer pursuant to Clause 8.4.

5.5 Fees are stated exclusive of Value Added Tax, which shall be paid by the Customer unless otherwise stated.

5.6 Fees do not include charges for any third party communications services used by the Customer to connect the Customer to the Services unless otherwise stated.

5.7 Where Tagadab provides advanced support, custom programming or configuration, or software installation which is not referred to in the Order Form then it may charge the Customer additional Fees which will be calculated on a time and materials basis at Tagadab's standard consultancy rates in place from time to time. No work will be undertaken without the prior written consent of the Customer.

5.8 If payment of any Fees is not made in full by the Customer by the due date for payment under the terms of this Agreement, Tagadab may at its discretion, without prejudice to its other rights and remedies:

5.8.1 charge interest on any overdue amounts at the rate of 5% per annum above Natwest plc base rate for the time being, calculated from the date of the invoice to the date actual payment is received;

5.8.2 suspend the provision of the Services to the Customer until such time as all overdue amounts (including any interest due) are paid in full.

5.8.3 suspend entitlements of any amounts due under the SLA.

5.9 Tagadab may charge the Customer administration fees in respect of any cheques and direct debits returned unpaid by the Customer's bank and any credit card payments returned unpaid.

- 5.10 All amounts due under this Agreement to be paid by the Customer to Tagadab shall be paid in full without any deduction or withholding other than that required by law in respect of withholding or deduction of tax and the Customer shall not be entitled to assert any credit set-off or counterclaim against Tagadab in order to justify withholding payment of any such amount in whole or in part.
- 5.11 Tagadab may at any time require the Customer to issue a deposit or other form of security acceptable to Tagadab if:
- 5.11.1 the Customer's financial circumstance or payment history is or becomes unacceptable to Tagadab;
  - 5.11.2 there is a material change in the Customer's actual or anticipated usage of the Services which results or, in Tagadab's sole opinion, may result in an increased risk to Tagadab of the Fees not being paid by the Customer.

Upon receipt of a written request for security from Tagadab, the Customer shall have 5 Working Days to provide such security and, if the Customer fails to comply with such request in that time period, Tagadab may, at its sole discretion, immediately refuse to accept any further Order Forms and /or suspend the delivery of Services and/or terminate this Agreement without further notice and without refund to the Customer of any payments received to date.

## 6. CONFIDENTIALITY

- 6.1 Each party (the “**receiving party**”) shall hold and keep confidential all Confidential Information of the other party (the “**disclosing party**”) during the Term and thereafter, and shall not disclose any such Confidential Information to any third party without the express written permission of the disclosing party. Without limitation, the terms of any SLA entered into pursuant to this Agreement shall be the Confidential Information of Tagadab.
- 6.2 Nothing in this Clause 6 shall prevent the receiving party from disclosing:-
- 6.2.1 any Confidential Information of the disclosing party to any Group Company, consultant, subcontractor or other person provided that such disclosure is reasonably necessary for the purposes of this Agreement and that the receiving party has ensured that the recipients are made aware of and comply with the provisions of this Clause 6 in relation to such Confidential Information;
  - 6.2.2 any Confidential Information which is or becomes public knowledge other than by a breach of this Clause 6;
  - 6.2.3 any Confidential Information which must be disclosed to any governmental or regulatory body or for any legal or judicial proceedings.
- 6.3 The Customer acknowledges that any Confidential Information obtained from or relating to Tagadab or any Tagadab Group Company by the Customer in the course of negotiating or in the performance of this Agreement is and shall remain the property of Tagadab or the relevant Group Company, as applicable.
- 6.4 Notwithstanding the provisions of this Clause 6, the Customer hereby agrees that Tagadab may refer to the Customer, by company or trading name, and to the existence

of this Agreement in any marketing or promotional materials of Tagadab or any Tagadab Group Company (including the Tagadab Website).

## **7. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS**

7.1 All right, title and interest to and all Intellectual Property Rights in the Service Deliverables remains with Tagadab, the Tagadab Group Companies and/or Tagadab's suppliers and licensors. The Customer shall not do, or omit to do, anything which may jeopardise, limit or interfere in any manner with Tagadab's rights (or the rights of its Group Companies, suppliers and/or licensors) in the Service Deliverables.

7.2 Without prejudice to Clause 7.1, where in the course of the provision of the Services, Tagadab provides any Service Deliverables which are owned or licensed by any third party (which shall include any Tagadab Group Company) or in which any Intellectual Property Rights are vested in a third party, the Customer shall comply in full with all licence or other agreements applicable to the use of such third party Service Deliverables (as may be amended from time to time).

7.3 If any Tagadab proprietary software is provided by Tagadab to Customer as part of the Services, Tagadab hereby grants a personal, non-transferable, non-exclusive licence for the Term to the Customer to use such software solely for the purposes of the receipt of use of the Services under this Agreement. The Customer agrees to comply with any terms and conditions governing the use of such software provided to it by Tagadab from time to time.

## **8. TERM AND TERMINATION**

8.1 Subject to this clause 8, each of the Services will commence on the Services Commencement Date and shall continue for the Initial Period. At the end of the Initial Period, each Service will be automatically renewed for the Renewal Period, and thereafter for consecutive Renewal Periods, unless or until:

8.1.1 such Services are terminated pursuant to clause 8.2 of this Agreement or under the Specific Terms; or

8.1.2 this Agreement is terminated,

whichever is earlier.

8.2 Both Tagadab and the Customer may terminate the provision of any of the Services at the end of the Initial Period or any Renewal Period for such Services by providing not less than the Minimum Written Notice to the other party prior to the expiry of the Initial Period or the relevant Renewal Period (as the case may be).

8.3 Tagadab may terminate this Agreement or the provision of any of the Services under this Agreement at any time immediately upon written notice to the Customer if:

8.3.1 the Customer is in material breach of this Agreement which is capable of remedy, and has failed to remedy such breach within 15 days of a written request from Tagadab to do so. Any failure by the Customer to pay any sum due under this Agreement by the due date for payment shall, without limitation, be a material breach of this Agreement which is capable of remedy for the purposes of this Clause 8.3.1;

- 8.3.2 the Customer is in material breach of this Agreement which is incapable of remedy. A breach of Clauses 4, 6 or 7 by the Customer shall, without limitation, be a material breach of this Agreement which is incapable of remedy for the purposes of this Clause 8.3.2;
  - 8.3.3 it becomes unlawful for Tagadab (or any other third party supporting the Services) to continue to provide the Services, or any other third party supporting the Services is required to cease the Services by a competent regulatory authority; or
  - 8.3.4 any other third party supporting the Services ceases to provide its services to Tagadab or otherwise materially changes the terms on which it provides its services to Tagadab, beyond the reasonable control of Tagadab;
  - 8.3.5 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or enters into any composition or arrangement with its creditors generally.
- 8.4 The Customer may terminate this Agreement at any time immediately upon written notice to Tagadab if:
- 8.4.1 Tagadab is in material breach of this Agreement which is capable of remedy, and has failed to remedy such breach within 15 days of a written request from the Customer to do so; or
  - 8.4.2 Tagadab is in material breach of this Agreement which is incapable of remedy.
- 8.5 Either party may terminate this Agreement at any time immediately upon notice in writing to the other party if:
- 8.5.1 the other party suspends, or threatens to suspend, payment of its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - 8.5.2 an order is made or resolution is passed, or a notice is issued convening a meeting for the purpose of passing a resolution, or any analogous proceedings are taken for the winding-up, administration or dissolution (other than a members' voluntary liquidation solely for the purpose of solvent amalgamation, reconstruction, reorganisation, dissolution, merger or consolidation) of the other party; or
  - 8.5.3 any liquidator, trustee in bankruptcy, receiver, administrative receiver, administrator or similar officer is appointed over, or in respect of, the other party or any part of its business or assets; or
  - 8.5.4 a creditor or encumbrance of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days
- 8.6 Upon termination or expiry of this Agreement or the provision of any of the Services:
- 8.6.1 the Customer shall immediately stop using the Services and the Customer's right to use the Services shall immediately cease;

- 8.6.2 any licences granted by Tagadab under this Agreement shall terminate; and
  - 8.6.3 the Customer shall remain liable for all outstanding obligations and Fees including any termination or cancellation fees referred to in this Agreement.
  - 8.6.4 all Tagadab Equipment shall be returned to Tagadab by the Customer at the Customer's expense.
- 8.7 The following clauses shall survive the termination or expiry of this Agreement: 1.1.8, 5, 6, 7, 8, 9, 10, 11, 14 and 15:

## 9. WARRANTIES

- 9.1 Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform this Agreement.
- 9.2 Tagadab, or any third party suppliers instructed by Tagadab, shall provide the Services using reasonable care and skill with due regard to applicable Health and Safety guidelines.
- 9.3 The Services shall be provided in compliance with applicable law and regulation.
- 9.4 Save as expressly set out in this Agreement, all conditions, warranties and representation, express or implied, statutory or otherwise (including the fitness of the Services for a particular purpose) are hereby excluded.

## 10. LIABILITY

- 10.1 The Customer shall indemnify and keep Tagadab indemnified against any and all costs, claims, losses, liabilities, proceedings and expenses (including legal fees) which are brought or threatened against Tagadab or a Claranet Group Company by any person, arising out of or in connection with the Customer's:
  - 10.1.1 use of the Services; or
  - 10.1.2 breach of this Agreement.
- 10.2 Nothing in this Agreement shall exclude or limit either party's liability for
  - 10.2.1 death or personal injury resulting from its negligence or that of its employees, agents or subcontractors;
  - 10.2.2 fraud or fraudulent misrepresentation; and
  - 10.2.3 any other matter for which liability cannot be excluded or limited as a matter of law.
- 10.3 Subject to Clause 10.2, Tagadab shall not be liable to the Customer for any:-
  - 10.3.1 indirect, special or consequential loss of damage; or
  - 10.3.2 loss of profits, business opportunities, revenue, anticipated savings; wasted expenditure, goodwill or for any loss or corruption or destruction of data.

- 10.4 Subject to Clause 10.2 and 10.3, Tagadab's total aggregate liability in contract, tort or otherwise (including negligence) howsoever arising out of or in connection with this Agreement shall in respect of any one or more incidents not exceed the total Fees received by Tagadab from the Customer in the calendar year in which the incident giving rise to the liability occurs. For the avoidance of doubt, Tagadab's total aggregate liability shall not exceed £1,000,000 in connection with this Agreement.
- 10.5 The Customer accepts that Tagadab has no control over the information transmitted to or from the Services and that Tagadab does not ordinarily examine the use to which Customers put the Services or the nature of the information they are sending or receiving and the Customer agrees that Tagadab is a mere conduit in accordance with the Electronic Commerce (EC Directive) Regulations 2002. Tagadab hereby excludes all liability of any kind for the transmission or reception of information of whatever nature through the Services.
- 10.6 The parties expressly agree that if any limitation or provision contained or expressly referred to in this Clause 10 is held to be invalid under any applicable statute or rule of law, it shall, to that extent, be deemed omitted. If any party becomes liable for loss or damage which would otherwise have been excluded, that liability shall be subject to the other limitations and provisions set out in this Clause 10.

## 11. DATA PROTECTION

- 11.1 Each party shall comply with its respective obligations under the Data Protection Act 1998 (as amended or replaced from time to time) ("**DPA**") in respect of any personal data related to either party's employees, customers and agents which comes into the receiving party's possession. Neither party shall do or omit to do anything which places the other party in breach of its obligations under the DPA, and nothing in this Agreement shall be deemed to prevent any party from taking the steps it reasonably deems necessary to comply with the DPA.

## 12. NOTICES

- 12.1 Any notice required to be given under or in connection with this Agreement shall be in writing and shall be served by delivering it personally, or by sending it by pre-paid first-class post, recorded delivery or registered post, or by fax or email by the Customer to Tagadab at: Sales Administrator, Tagadab Limited, 21 Southampton Row, London WC1B 5HA, fax: +44 (0) 20 7197 8092; email [sales@tagadab.com](mailto:sales@tagadab.com) and by Tagadab to the Customer to the address, fax number and/or email address set out on the Order Form (or to such other address as either party may have notified to the other party in accordance with this Clause 12.1).
- 12.2 A notice shall be deemed to have been received:
- 12.2.1 if delivered personally, at the time of delivery;
  - 12.2.2 in delivered by post, 3 Working Days from the date of posting;
  - 12.2.3 if sent via fax or email, the same Working Day of sending.

## 13. FORCE MAJEURE

- 13.1 Neither party to this Agreement shall be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such delay or

non-performance is due to a Force Majeure Event. The Customer may not rely on a Force Majeure Event for any delay or non-performance of any obligation to pay Tagadab under this Agreement.

- 13.2 Either party may, during the continuance of any Force Majeure Event, terminate this Agreement by written notice to the other party if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 30 Working Days.

## 14. NON-SOLICITATION

- 14.1 Each party agrees during the term of this Agreement [and for a period of 1 year following its termination], not to solicit or induce any officer, employee, agent or contractor of the other party involved with the provision of the Services or the management of this Agreement or any significant part thereof, to terminate their employment or engagement with the other.
- 14.2 If a party is found to be in breach of the abovementioned non-solicitation clause, then that party agrees to compensate the other with a one-off payment of whichever is the lesser of (a) £100,000 or (b) the gross annual salary of the officer, employee, agent or contractor of the other so solicited or induced.

## 15. GENERAL

- 15.1 This Agreement (consisting of these Terms and Conditions, the Order Form, the AUP, any Service Description and the SLA) constitutes the entire agreement and understanding between the parties in respect of the matters dealt in it and supersedes any previous agreement between the parties in relation to such matters. Any amendments agreed between the parties will be appended to this Agreement as a separate schedule and in the event of any discrepancy between the terms of the schedule and these standard Terms and Conditions, then the terms of the schedule shall prevail.
- 15.2 The Customer acknowledges that, in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) except as expressly provided in this Agreement. The only remedy available to the Customer in respect of any such statement, representation, warranty or undertaking shall be for breach of contract under the terms of this Agreement. Nothing in this Clause 15.2 shall operate to exclude any liability for fraud.
- 15.3 A person who is not party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 15.4 A waiver of any right under this Agreement is only effective if it is in writing and signed by the waiving party, and it applies only to the person to whom the waiver is addressed and the circumstances for which it is given.
- 15.5 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

- 15.6 If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 15.7 This Agreement is personal to the Customer and accordingly the Customer shall not assign, or grant any security interest over, any of its rights or obligations under this Agreement without the prior written consent of Tagadab. Tagadab retains the right to assign this Agreement to any Group Company at any time.
- 15.8 This Agreement is subject to the laws of England and Wales and both parties hereby submit to the exclusive jurisdiction of the English Courts.