

Subscription Terms and Conditions

Binder Cloud Ltd

(registered in England and Wales with company number 11929666)

Registered office: Shepherd Partnership, Carleton Business Park, Skipton BD23 2DE

1 Definitions and Interpretation

1.1 In these Conditions, the following terms have the following meanings:

Agreement means the agreement between Binder and the Customer for the supply of Services incorporating these Conditions and the Order.

Authorised Client Users individuals authorised by Authorised IFA Users to use the Services subject to the terms set out in the End User License Agreement.

Authorised IFA Users those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the User Guides, as further described in clause 3.2.4.

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

Confidential Information information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 12.5 or clause 12.6.

Customer the IFA business which subscribes for the Services from Binder.

Customer Data the data inputted by the Customer, Authorised IFA Users, Authorised Client Users for the purpose of using the Services or facilitating the Customer's use of the Services.

Data Protection Legislation all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK retained version of the General Data Protection Regulation, the Data Protection Act 2018 (and regulations made thereunder), and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Effective Date the date of this Agreement.

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

Order means the Customer's application for the Services as submitted via Binder's website when the Customer chooses a Service.

Services the subscription services provided by Binder to the Customer under this Agreement via <https://binder.cloud/> or any other website notified to the Customer by Binder from time to time, as more particularly described in the User Guides.

Software the online software applications provided by Binder as part of the Services.

Subscription Fees the subscription fees payable by the Customer to Binder for the User Subscriptions, as set out in the Order subject to increase in accordance with clause 10.5.

Subscription Term has the meaning given in clause 15.1.

User Guides the help videos made available to the Customer by Binder online via <https://binder.cloud/> or such other web address notified by Binder to the Customer from time to time.

User Subscriptions the user subscriptions purchased by the Customer pursuant to clause 10.1 which entitle Authorised IFA Users and Authorised Client Users to access and use the Services in accordance with this Agreement.

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

- 1.2 Clause headings shall not affect the interpretation of these Conditions.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular; and a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of these Conditions and shall include all subordinate legislation made as at the date of these Conditions under that statute or statutory provision.
- 1.7 A reference to writing or written includes e-mail but excludes faxes.

2 Application of these Conditions

- 2.1 These Conditions apply to and form part of the Agreement. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Agreement except to the extent that Binder otherwise agrees in writing.

2.3 Each Order by the Customer to Binder shall be an offer to purchase Services subject to these Conditions.

3 **User Subscriptions**

3.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 4.2 and clause 10.1, the restrictions set out in this clause 3 and the other terms and conditions of these Conditions, Binder hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised IFA Users and Authorised Client Users to use the Services and the User Guides during the Subscription Term solely for the Customer's internal business operations.

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

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

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

3.2.3 each Authorised IFA User shall keep a secure password for their use of the Services and User Guides, that such password shall be changed no less frequently than once each month and that each Authorised IFA User shall keep their password confidential;

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

3.2.5 it shall permit Binder or Binder's designated auditor to audit the Services in order to establish the name and password of each Authorised IFA User and the Customer's data processing facilities to audit compliance with these Conditions. Each such audit may be conducted no more than once per quarter, at Binder's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;

3.2.6 if any of the audits referred to in clause 3.2.5 reveal that any password has been provided to any individual who is not an Authorised IFA User, then without prejudice to Binder's other rights, the Customer shall promptly disable such passwords and Binder shall not issue any new passwords to any such individual; and

3.2.7 if any of the audits referred to in clause 3.2.5 reveal that the Customer has underpaid Subscription Fees to Binder, then without prejudice to Binder's other rights, the Customer shall pay to Binder an amount equal to such underpayment as calculated in accordance with Binder's prices from time to time within 10 Business Days of the date of the relevant audit.

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

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

3.3.2 facilitates illegal activity;

3.3.3 depicts sexually explicit images;

3.3.4 promotes unlawful violence;

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

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

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

3.4 The Customer shall not:

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

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

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

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

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

3.4.4 subject to clause 17.10, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the

Services and/or User Guides available to any third party except the Authorised IFA Users and Authorised Client Users, or

3.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or User Guides, other than as provided under this clause 3; or

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

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

3.6 The rights provided under this clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

4 Additional User Subscriptions

4.1 Subject to clause 4.2, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Order and Binder shall grant access to the Services and the User Guides to such additional Authorised IFA Users or Authorised Client Users in accordance with the provisions of these Conditions.

4.2 The Customer shall, within 30 days of the date of Binder's invoice, pay to Binder the relevant fees for such additional User Subscriptions it has purchased and, if such additional User Subscriptions are purchased by the Customer part way through a month, such fees shall be pro-rated from the date of activation by Binder for the remainder of the month.

5 Services

5.1 Binder shall, during the Subscription Term, provide the Services and make available the User Guides to the Customer on and subject to the terms of these Conditions.

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

6 Data Protection

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

6.2 Binder shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Customer Data available at <https://binder.cloud/legal> as may be amended from time to time by the Supplier in its sole discretion.

- 6.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 6 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. **Controller, Processor, Data Subject, Personal Data, Personal Data Breach** and **Processing** as used in this clause have the meanings given to them in the Data Protection Legislation.
- 6.4 The parties acknowledge that where Binder processes any personal data on the Customer's behalf when performing its obligations under these Conditions:
- 6.4.1 the Customer is the controller and Binder is the processor for the purposes of the Data Protection Legislation; and
- 6.4.2 the Customer retains control of the Personal Data and remains responsible for its compliance obligations under the Data Protection Legislation, including but not limited to, providing any required notices and obtaining any required consents, and for the written processing instructions it gives to Binder.
- 6.5 Without prejudice to the generality of clause 6.3, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Binder for the duration and purposes of the Agreement so that Binder may lawfully use, process and transfer the personal data in accordance with these Conditions on the Customer's behalf.
- 6.6 Without prejudice to the generality of clause 6.3, Binder shall, in relation to any personal data processed in connection with the performance by Binder of its obligations under these Conditions:
- 6.6.1 process that personal data only on the documented written instructions of the Customer unless Binder is required by the Data Protection Legislation to process personal data;
- 6.6.2 maintain the confidentiality of the Personal Data and not disclose the personal data to third-parties unless the Customer or this Agreement specifically authorises the disclosure, or as required by domestic law, court or regulator. If a domestic law, court or regulator requires Binder to process or disclose the personal data to a third-party, Binder must first inform the Customer of such legal or regulatory requirement and give the Customer an opportunity to object or challenge the requirement, unless the domestic law prohibits the giving of such notice;
- 6.6.3 not transfer any personal data outside of the United Kingdom unless the following conditions are fulfilled:
- 6.6.3.1 the Customer or Binder has provided appropriate safeguards in relation to the transfer;
- 6.6.3.2 the data subject has enforceable rights and effective legal remedies;

- 6.6.3.3 Binder complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - 6.6.3.4 Binder complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
 - 6.6.4 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;
 - 6.6.5 notify the Customer without undue delay on becoming aware of a personal data breach;
 - 6.6.6 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by applicable law to store the personal data (and for these purposes the term "delete" shall mean to put such data beyond use); and
 - 6.6.7 maintain complete and accurate records and information to demonstrate its compliance with this clause 6 and immediately inform the Customer if, in the opinion of Binder, an instruction infringes the Data Protection Legislation.
- 6.7 Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, 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).
- 6.8 The Customer consents to Binder appointing third-party processors of personal data under these Conditions. Binder confirms that it will enter into a written agreement with such a third-party processor, incorporating terms which are substantially similar to those set out in this clause 6 and which will reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and Binder, Binder shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 6.

6.9 Either party may, at any time on not less than 30 days' notice, revise this clause 6 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.

7 Third Party Providers

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

8 Supplier's Obligations

8.1 Binder undertakes that the Services will be performed substantially in accordance with the User Guides and with reasonable skill and care.

8.2 The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Binder's instructions, or modification or alteration of the Services by any party other than Binder or Binder's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1.

8.3 Binder:

8.3.1 does not warrant that:

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

8.3.1.2 that the Services, User Guides and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or

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

- 8.3.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and User Guides may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 8.4 These Conditions shall not prevent Binder from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under these Conditions.
- 8.5 Binder warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these Conditions.
- 8.6 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against Binder shall be for Binder to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Binder in accordance with its archiving procedure. Binder shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.

9 **Customer's Obligations**

9.1 The Customer shall:

9.1.1 provide Binder with:

9.1.1.1 all necessary co-operation in relation to these Conditions; and

9.1.1.2 all necessary access to such information as may be required by Binder,

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

9.1.2 without affecting its other obligations under these Conditions, comply with all applicable laws and regulations with respect to its activities under these Conditions;

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

9.1.4 ensure that the Authorised IFA Users and Authorised Client Users use the Services and the User Guides in accordance with these Conditions and with the End User Licence Agreement and shall be responsible for any Authorised IFA User's or Authorised Client User's breach of this Agreement;

- 9.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for Binder, its contractors and agents to perform their obligations under these Conditions, including without limitation the Services;
 - 9.1.6 ensure that its network and systems comply with the relevant specifications provided by Binder from time to time; and
 - 9.1.7 be, to the extent permitted by law and except as otherwise expressly provided in these Conditions, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Binder's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 9.2 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

10 **Charges and Payment**

- 10.1 The Customer shall pay the Subscription Fees to Binder for the User Subscription as set out in the Order.
- 10.2 The Customer shall on the Effective Date provide to Binder valid, up-to-date and complete credit card details or approved purchase order information acceptable to Binder and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:
- 10.2.1 its credit card details to Binder, the Customer hereby authorises Binder to bill such credit card:
 - 10.2.1.1 on the Effective Date for the Subscription Fees payable in respect of the first month of the Subscription Term; and
 - 10.2.1.2 subject to clause 15.1, monthly thereafter in respect of each following month;
 - 10.2.2 its approved purchase order information to Binder, Binder shall invoice the Customer:
 - 10.2.2.1 on the Effective Date for the Subscription Fees payable in respect of the first month of the Subscription Term; and
 - 10.2.2.2 subject to clause 15.1, monthly thereafter in respect of each following month,
- and the Customer shall pay each invoice within 30 days after the date of such invoice.

- 10.3 If Binder has not received payment within 7 days after the due date, and without prejudice to any other rights and remedies of Binder:
- 10.3.1 Binder may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and Binder shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- 10.3.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Bank of England from time to time, but 3% during any period for which the Bank of England base rate falls below 0%, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 10.4 All amounts and fees stated or referred to in this Agreement:
- 10.4.1 shall be payable in pounds sterling;
- 10.4.2 are, subject to clause 14.4, non-cancellable and non-refundable;
- 10.4.3 are exclusive of VAT, which shall be added to Binder's invoice(s) at the appropriate rate.
- 10.5 Binder shall be entitled to increase the Subscription Fees and/or the fees payable in respect of any additional User Subscriptions purchased pursuant to clause 4.2, upon 30 days' prior notice to the Customer.

11 **Proprietary Rights**

- 11.1 The Customer acknowledges and agrees that Binder and/or its licensors own all intellectual property rights in the Services and the User Guides. Except as expressly stated herein, these Conditions do not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the User Guides.
- 11.2 Binder confirms that it has all the rights in relation to the Services and the User Guides that are necessary to grant all the rights it purports to grant under, and in accordance with, these Conditions.

12 **Confidentiality**

- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- 12.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
- 12.1.2 was in the other party's lawful possession before the disclosure;

- 12.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- 12.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.
- 12.2 Subject to clause 12.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 12.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 12.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 12.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Binder's Confidential Information.
- 12.6 Binder acknowledges that the Customer Data is the Confidential Information of the Customer and/or its clients.
- 12.7 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 12.8 The above provisions of this clause 12 shall survive termination of these Conditions, however arising.

13 **Indemnity**

- 13.1 The Customer shall defend, indemnify and hold harmless Binder against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or User Guides, provided that:
- 13.1.1 the Customer is given prompt notice of any such claim;
- 13.1.2 Binder provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

- 13.1.3 the Customer is given sole authority to defend or settle the claim.
- 13.2 Binder shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services or User Guides in accordance with these Conditions infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
 - 13.2.1 Binder is given prompt notice of any such claim;
 - 13.2.2 the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to Binder in the defence and settlement of such claim, at Binder's expense; and
 - 13.2.3 Binder is given sole authority to defend or settle the claim.
- 13.3 In the defence or settlement of any claim, Binder may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 13.4 In no event shall Binder, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
 - 13.4.1 a modification of the Services or User Guides by anyone other than Binder; or
 - 13.4.2 the Customer's use of the Services or User Guides in a manner contrary to the instructions given to the Customer by Binder; or
 - 13.4.3 the Customer's use of the Services or User Guides after notice of the alleged or actual infringement from Binder or any appropriate authority.
- 13.5 The foregoing and clause 14.4 state the Customer's sole and exclusive rights and remedies, and Binder's (including Binder's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 14 **Limitation of Liability**
- 14.1 Except as expressly and specifically provided in these Conditions:
 - 14.1.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the User Guides by the Customer, and for conclusions drawn from such use. Binder shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Binder by the Customer in connection with the Services, or any actions taken by Binder at the Customer's direction;

- 14.1.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Conditions; and
- 14.1.3 the Services and the User Guides are provided to the Customer on an “as is” basis.
- 14.2 Nothing in this Agreement excludes or limits the liability of Binder:
 - 14.2.1 for death or personal injury caused by Binder’s negligence;
 - 14.2.2 for fraud or fraudulent misrepresentation; or
 - 14.2.3 for any other liability in respect of which it would be unlawful to limit or exclude liability.
- 14.3 Subject to clause 14.1 and clause 14.2, Binder shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any:
 - 14.3.1 loss of profits;
 - 14.3.2 loss of business;
 - 14.3.3 depletion of goodwill and/or similar losses;
 - 14.3.4 loss or corruption of data or information;
 - 14.3.5 pure economic loss; or
 - 14.3.6 for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under these Conditions.
- 14.4 Binder’s total aggregate liability in contract (including in respect of the indemnity at clause 13.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Conditions shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.
- 14.5 Nothing in these Conditions excludes the liability of the Customer for any breach, infringement or misappropriation of Binder’s Intellectual Property Rights.

15 **Term and Termination**

- 15.1 This Agreement shall, unless otherwise terminated as provided in this clause 15, commence on the Effective Date and shall continue until terminated by either party giving written notice to the other party to expire 30 days after the next date that payment of Subscription Fees is due (**Subscription Term**).

- 15.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 15.2.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - 15.2.2 the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - 15.2.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 15.2.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 15.2.5 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
 - 15.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 15.2.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
 - 15.2.8 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
 - 15.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 15.2.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

- 15.2.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - 15.2.12 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.
- 15.3 Binder may terminate this Agreement immediately upon written notice to the Customer if the Customer's business is sold or the Customer undergoes a change of control (where **control** has the meaning given by section 1124 of the Corporation Tax Act 2010).
- 15.4 On termination of this Agreement for any reason, the Customer shall have 30 days to download all Customer Data which it wishes it to retain. After 30 days, Binder may permanently delete all Customer Data, and will not be obliged to provide copies of the same to the Customer.
- 15.5 On termination of this Agreement for any reason:
- 15.5.1 all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the User Guides (save for the purposes of downloading copies of Customer Data as referred to in clause 15.4);
 - 15.5.2 each party shall return and make no further use of any equipment, property, User Guides and other items (and all copies of them) belonging to the other party; and
 - 15.5.3 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.
- 16 **Force Majeure**
- 16.1 Binder shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Binder or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

17 **General**

- 17.1 If there is an inconsistency between any of the provisions of these Conditions and the Order the provisions in these Conditions shall prevail.
- 17.2 No variation of these Conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 17.3 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.4 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.
- 17.5 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 17.6 If any provision or part-provision of this Agreement is deemed deleted under clause 17.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 17.7 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 17.8 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 17.9 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 17.10 The Customer shall not, without the prior written consent of Binder, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 17.11 Binder may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 17.12 Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

- 17.13 This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 17.14 This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 17.15 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this Agreement.
- 17.16 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).
- 17.17 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 17.18 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).