



BACKGROUND:

These Terms and Conditions are referred to and form part of the Agreement (as hereinafter defined) and apply to inclusIQ's provision of the Services to you, the Client (as hereinafter defined).

1. Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

"Affiliate"	in relation to a legal entity (1) its ultimate holding company (2) its subsidiaries and (3) all other subsidiaries of its ultimate holding company as the terms "subsidiary" and "holding company" are defined by Section 1159 of the Companies Act 2006 as amended;
"Agreement"	means the agreement entered into by inclusIQ and the Client incorporating these Terms and Conditions (or variation thereof agreed upon by both Parties) which shall govern provision of the Services;
"Business Day"	means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in Scotland;
"Client"	means the party procuring the Services from inclusIQ who shall be identified in the Agreement;
"Commencement Date"	means the date on which provision of the Services will commence, as defined in the Agreement;
"Confidential Information"	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such) and shall without prejudice to the foregoing, include Intellectual Property Rights;

“Database”	means the database stored on the Platform which contains <i>inter alia</i> User Data;
“DPA”	means the Data Protection Act 2018 and any variation, supplementation replacement, modification, amendment or re-enactment thereof;
“Fees”	means any and all sums due under the Agreement from the Client to inclusIQ, as specified in the Agreement;
“Game”	means an interactive e-learning, role playing game containing scenarios and varying outcomes, played or enacted by one or more participants both physically and virtually via the Platform and “Games” shall be construed accordingly;
“GDPR”	means EU Regulation 2016/679 General Data Protection Regulation and any variation, supplementation replacement, modification, amendment or re-enactment thereof;
“inclusIQ”	means INCLUSIQ LTD , incorporated in Scotland under the Companies Act 2006 (Number SC449922) and having its Registered Office at 17 Charles Street, Pittenweem, Anstruther, KY10 2QQ;
“inclusIQ Website”	means www.inclusiq.com operated from the Platform and forming part of the Services;
“Intellectual Property Rights”	<p>means (a) any and all rights in any patents, trade marks, service marks, registered designs, applications (and rights to apply for any of those rights) trade, business and company names, internet domain names and e-mail addresses, unregistered trade marks and service marks, copyrights, database rights (including the Database), know-how, rights in designs and inventions, source code, algorithms and business processes;</p> <p>(b) rights under licences, consents, orders, statutes or otherwise in relation to a right in paragraph (a);</p> <p>(c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) which now or in the future may subsist; and</p> <p>(d) the right to sue for past infringements of any of the foregoing rights;</p>

“Minor Amendment(s)”

“Personal Data” has the meaning ascribed to it in the GDPR;

“Platform” means the hardware and software environment in which the Services operate, which comprises one or more server computers (whether virtual or not), mirroring/duplicating/back-up and storage systems and relative hardware operating software, virtual machine software (where relevant), operating system software, database software, anti-virus and security software, switches, power supplies and telecommunications infrastructure;

“Services” means the services to be provided by inclusIQ to the Client in accordance with the Agreement, as fully defined in the Agreement, and subject to the terms and conditions of the Agreement; and

“Software” means the inclusIQ proprietary Games and e-learning software, written in object and source code residing on and used for operating the Platform and the Services as Updated and Upgraded from time to time;

“Term” means the term of the Agreement as defined therein.

“Update” means any update, update rollup, service pack, feature pack, critical update, security update, or hotfix that is used to improve or to fix a software product;

“Upgrade” means a software package that replaces an installed version of a product with a newer version of the same product, typically leaving existing client data and preferences intact while replacing the existing software with the newer version;

“User” / “Users” means the Client and its employees that accesses the Services in terms of the Agreement;

“User Data” means data created supplied by and/or relating to Users stored in the Database;

1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

- 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- 1.2.3 "these Terms and Conditions" is a reference to these Terms and Conditions as amended or supplemented at the relevant time;
- 1.2.4 a Clause or paragraph is a reference to a Clause of these Terms and Conditions or to a Clause of the Agreement, as appropriate; and
- 1.2.5 a "Party" or the "Parties" refer to the parties to the Agreement.
- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.
- 1.6 References to persons shall include corporations.

2. Provision of the Services

- 2.1 With effect from the Commencement Date, inclusIQ shall, throughout the Term of the Agreement, provide the Services to the Client.
- 2.2 inclusIQ shall provide the Services with reasonable skill and care, commensurate with prevailing standards in the e-learning sector in the United Kingdom.
- 2.3 inclusIQ shall act in accordance with all reasonable instructions given to it by the Client provided such instructions are compatible with the specification of Services provided in the Agreement.
- 2.4 inclusIQ shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.
- 2.5 inclusIQ shall use all reasonable endeavours to accommodate any reasonable changes in the Services that may be requested by the Client, subject to the Client's acceptance of any related reasonable changes to the Fees that may be due as a result of such changes.

3. Intellectual Property Rights

- 3.1 Subject to any provision in the Agreement to the contrary inclusIQ and its Affiliates shall retain the ownership of any and all Intellectual Property Rights that may subsist in anything produced by inclusIQ in the course of providing the Services (including without prejudice to the foregoing generality, the contents of the Database), unless stated otherwise
- 3.2 Throughout the Term of the Agreement, where the Services include Software the Client shall use the Services under a non-exclusive, non-transferrable licence, as set out in the Agreement. The details of the license such as (but not limited to) the number of Users permitted to access the Services at any given time, the cost of the license and the duration of the license and how the Services are accessed (e.g. via the Platform or locally) are as detailed in the

Schedule to the Agreement.

- 3.3 Where elements of the Services are the property of a third party, inclusIQ warrants that it has all requisite authority to sub-licence such elements to the Client for the purposes of this Agreement and for use under its terms.
- 3.4 Subject to the terms of Clause 3.1, the Client and Users may not reproduce, copy, distribute, store or in any other fashion re-use any Intellectual Property Rights of inclusIQ or its Affiliates unless given express written permission to do so by inclusIQ.
- 3.5 Where the Client either suspects or is aware of any breach of Intellectual Property Rights covered by this Clause 3 it shall be under a duty to inform inclusIQ of such breach immediately.
- 3.6 inclusIQ shall assert all moral rights arising out of Chapter IV of the Copyright, Designs and Patents Act 1988.

4. Client's Obligations

- 4.1 The Client shall use all reasonable endeavours to provide all pertinent information to inclusIQ that is necessary for inclusIQ's provision of the Services.
- 4.2 The Client may, from time to time, issue reasonable instructions to inclusIQ in relation to inclusIQ's provision of the Services. Any such instructions should be compatible with the specification of the Services provided in the Agreement.
- 4.3 In the event that inclusIQ requires the decision, approval, consent or any other communication from the Client in order to continue with the provision of the Services or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner.
- 4.4 If any consents, licences or other permissions are needed from any third parties, it shall be the Client's responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof).
- 4.5 If the nature of the Services requires that inclusIQ has access to the Client's premises or any other location, access to which is lawfully controlled by the Client, the Client shall ensure that inclusIQ has access to the same at the times to be agreed between inclusIQ and the Client as required.
- 4.6 Any delay in the provision of the Services resulting from the Client's failure or delay in complying with any of the provisions of Clause 4 of the Agreement shall not be the responsibility or fault of inclusIQ.
- 4.7 Not to use the Services in any way other than that for which they were designed and provided by inclusIQ.
- 4.8 The Client shall not permit any third party to use the Services other than those Users permitted in terms of the Agreement. If the Client permits any unauthorised third parties to use the Services, then inclusIQ will be entitled to charge a Fee commensurate with the extent of the unauthorised use and that without prejudice to any other rights or remedies which inclusIQ may have for breach of the terms of this Agreement.
- 4.9 inclusIQ may periodically Upgrade and Update the Services, in order to

provide Users with a greater, evolving user experience. Some of these changes shall occur automatically, while others may require the Client to schedule and implement the changes. The changes may also mean that Users need to upgrade their equipment in order to make efficient use of the Services. inclusIQ shall provide the Client with reasonable notification in advance in this case.

5.

5.1 Where the Services include Software:

5.1.1 These Services shall be located on the Platform, unless specified otherwise in the Agreement. inclusIQ has full administrative access rights to the Platform. Users may access the Services, but have no right to administer the Platform or receive a copy of the object code or source code to the Software.

5.1.2 It is the responsibility of the Client to ensure that it has sufficient and appropriate resources, computer hardware and software and broadband of a sufficient performance specification to be able to use the Services adequately. None of these things are inclusIQ's responsibility.

5.1.3 Should the Client require an increased maximum number of Users, such an increase shall be permitted at the exclusive discretion of inclusIQ. inclusIQ reserves the right to increase Fees proportionately, in accordance with Schedule Part 3 of the Agreement.

5.1.4 Use by Users not employed by the Client is not permitted under this Agreement in the absence of express written consent from inclusIQ. inclusIQ may require such details as the reason that access to the Services and Platform is required by the User not employed by the Client, details of such Users and other information which may be specified from time to time.

5.1.5 The Client shall use the Services exclusively for the purposes of carrying on its business.

5.1.6 inclusIQ may monitor the Client's use of the Services and Platform from time to time to ensure compliance with the terms and conditions of the Agreement and with the Acceptable Usage Terms in Clause 5. In the event that the Client's use of the Services is in breach of the Acceptable Usage Terms .

5.1.7 The Client may only access the Services detailed in the Agreement. No access to other parts of the Platform shall be permitted in the absence of express written permission from inclusIQ.

5.1.8 The Client is exclusively responsible for it's use of the Services, including the conduct of individual Users (Users to include any authorised users not employed by the Client) and must ensure that all use is in accordance with the Agreement. The Client shall notify inclusIQ immediately of any breaches of the Agreement by any Users.

5.1.9 The Client's use of the Services and Portal may, from time to time, be governed by statutory or regulatory rules and requirements external to the terms and conditions of the Agreement. It shall be the Client's

exclusive responsibility to ensure that their use of the Services is in compliance with any such laws.

5.1.10 The Client's use of the Services shall be subject to the following limitations, any of which may be waived by InklusIQ giving their express written consent:

5.1.10.1 The Client may not use or redistribute the Services or the Portal for the purpose of conducting the business of an Application Service Provider;

5.1.10.2 The Client may not redistribute or reproduce the Services or the Platform through any network; and

5.1.10.3 The Client may not allow any unauthorised third party to access the Services or the Platform.

5.1.10.4 Neither the Client, nor anyone on their behalf may, in the absence of written consent from InklusIQ:

5.1.11 Make changes of any kind to the Services or the Platform; or

5.1.12 Attempt to correct any fault or perceived fault in the Services or the Platform.

5.1.13 Sharing of accounts is not permitted unless expressly authorised in writing by InklusIQ. Users must keep login details confidential and Users should not reveal their unique login details to any unauthorised third parties. InklusIQ accepts no liability for any losses or damages incurred as a result of account details being shared in breach of the terms of this Agreement. It is recommended that Users do not save their login details in their internet browser.

6. **Acceptable Usage Terms**

6.1 When using the Services where the Services includes Software; Users should do so in accordance with the following rules:

6.1.1 Users must not use the Services in a way that violates any criminal or civil law;

6.1.2 Users must not use obscene or vulgar language;

6.1.3 User must not upload material onto the Platform that is unlawful or otherwise objectionable (including that which may be in breach of rules, regulations or legislation in force in the United Kingdom or any other jurisdiction in which your User Site can be lawfully accessed. This does not extend to material which may be automatically blocked in certain jurisdictions but that is lawful in your home country);

6.1.4 Users must not upload any material onto the Platform that is intended to promote or incite violence or any other unlawful conduct against any group, individual or animal. This includes, but is not limited to, the provision of instructions on how to assemble weapons of any kind, bombs, grenades or other explosive devices;

- 6.1.5 Users must not infringe the intellectual property rights of any third party including, but not limited to, copyright, trademarks, patents and designs;
- 6.1.6 Users must not upload onto the Platform any material that may contain viruses or other software or instructions that may damage or disrupt other software, computer hardware or communications networks;
- 6.1.7 Users must not upload onto the Platform any unauthorised mass-communications such as “spam” or “junk mail”; and
- 6.1.8 inclusIQ does not screen or pre-approve any Users or User Data (although Users acknowledge that inclusIQ may do so if it wishes).

- 6.1.9 inclusIQ may edit User Data to comply with the provisions of sub-Clause 5.1.1 without prior consultation. In cases of severe breaches of the provisions of sub-Clause 5.1.1, a User's access to the Services may be suspended and/or terminated. The Client will, at inclusIQ's discretion be informed in writing of the reasons for such suspensions and or terminations.
- 6.1.10 inclusIQ accepts no responsibility or liability for any infringement of third party rights by Users.
- 6.1.11 inclusIQ will not be liable in any way or under any circumstances for any loss or damage that any User may incur as a result of the Services, or inclusIQ exercising its rights under the Agreement, nor for any errors or omissions in the Services. Use of and reliance upon the Services is entirely at the Client's own risk.
- 6.1.12 The Client acknowledges that inclusIQ may retain copies of any and all communications, information, User Data sent to inclusIQ.
- 6.1.13 Users must comply with the terms of the DPA and the GDPR at all times.

7. Fees, Payment and Records

- 7.1 The Client shall pay the Fees to inclusIQ in accordance with the provisions of the Agreement.
- 7.2 inclusIQ shall invoice the Client for Fees due in accordance with the provisions of the Agreement.
- 7.3 All payments required to be made pursuant to the Agreement by either Party shall be made within 15 Business Days of receipt by that Party of the relevant invoice.
- 7.4 All payments required to be made pursuant to the Agreement by either Party shall be made in pounds sterling in cleared funds to such bank in the EEA as the receiving Party may from time to time nominate, without any set-off, withholding or deduction except such amount (if any) of tax as that Party is required to deduct or withhold by law.
- 7.5 Where any payment pursuant to the Agreement is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.
- 7.6 Any sums which remain unpaid shall incur interest on a daily basis at 5% above the base rate of Clydesdale Bank plc from time to time in force, from the due date of payment until payment is made in full of any such outstanding sums.

8. Liability, Indemnity and Insurance

- 8.1 inclusIQ shall ensure that it has in place at all times suitable and valid insurance that shall include professional indemnity insurance.
- 8.2 In the event that inclusIQ fails to perform the Services with reasonable care and skill it shall carry out any and all necessary remedial action at no additional cost to the Client.
- 8.3 inclusIQ's total liability for any loss or damage caused as a result of its negligence or breach of the Agreement shall be limited to the Fees defined in

the Agreement.

- 8.4 inclusIQ shall not be liable for any loss or damage suffered by the Client that results from the Client's failure to follow any instructions given by inclusIQ.
- 8.5 Nothing in these Terms and Conditions nor in the Agreement shall limit or exclude inclusIQ's liability for death or personal injury.
- 8.6 Subject to sub-Clause 7.3 above, inclusIQ shall indemnify the Client against any costs, liability, damages, loss, claims or proceedings arising out of inclusIQ's breach of the Agreement.
- 8.7 The Client shall indemnify inclusIQ against any costs, liability, damages, loss, claims or proceedings arising from:
 - 8.7.1 loss or damage to any equipment (including that belonging to any third parties appointed by inclusIQ) caused by the Client or its agents or employees or Users;
 - 8.7.2 the Client's breach of the terms of this Agreement.
- 8.8 Neither Party shall be liable to the other or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control in terms of Clause 10 hereof.

9. Confidentiality

- 9.1 Each Party shall undertake that, except as provided by sub-Clause 8.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of the Agreement and for 3 years after its termination:
 - 9.1.1 keep confidential all Confidential Information;
 - 9.1.2 not disclose any Confidential Information to any other party;
 - 9.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Agreement;
 - 9.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
 - 9.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers or Users does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 8.1.1 to 8.1.4 of the Agreement.
- 9.2 Either Party may:
 - 9.2.1 disclose any Confidential Information to:
 - 9.2.1.1 any sub-contractor or supplier of that Party;
 - 9.2.1.2 any governmental or other authority or regulatory body; or
 - 9.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;

to such extent only as is necessary for the purposes contemplated by the Agreement (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is

confidential and (except where the disclosure is to any such body under sub-Clause 8.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of Clause 7 of the Agreement, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

9.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information that is not public knowledge.

9.3 The provisions of Clause 8 of the Agreement shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.

10. **Use of Personal Data (Data Protection)**

10.1 All Personal Data that inclusIQ may collect (including, but not limited to, the Client's details and those of Users) will be collected, used and held in accordance with the provisions of the GDPR and the DPA.

10.2 inclusIQ may use Personal Data to:

10.2.1 Provide the Services to the Client and Users;

10.2.2 Process the Client's payment for the Services; and

10.2.3 Inform the Client and Users of new products and services available from inclusIQ.

10.3 inclusIQ will not pass on Personal Data to any other third parties.

10.4 inclusIQ will only pass on Personal Data received from Users:

11.

11.1.1 for the purposes of the Agreement and not for any other purpose;

11.1.2 to the extent and in such a manner as is necessary for those purposes; and

11.1.3 strictly in accordance with the Agreement or otherwise with the express written authorisation and instructions of the Client (which may be specific instructions or instructions of a general nature or as otherwise notified by the Client to inclusIQ).

12.

12.1 inclusIQ will use anonymised data obtained from the provision of the Services and the Database for statistical analysis, including (but not limited) for the purposes of:

12.1.1 improving the Services;

12.1.2 providing statistical information to third parties;

12.1.3 for research and development;

12.1.4 for the purposes of targeted advertising.

12.2 Where services include Software inclusIQ may place cookies on User's devices. Use of cookies is governed by inclusIQ's Privacy Policy, available from inclusIQ's Website. This policy is incorporated into these Terms and Conditions by this reference.

13. **Force Majeure**

13.1 No Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

13.2 inclusIQ accepts no liability for any disruption or non-availability of the inclusIQ Website resulting from external causes including, but not limited to, ISP equipment failure, host equipment failure, communications network failure, power failure, natural events, acts of war or legal restrictions and state-mandated censorship.

13.3 inclusIQ reserve the right to alter, suspend or discontinue any part (or the whole of) the Services including, but not limited to, the Content available. Where anything the Client has paid for is made unavailable and the Client is entitled to a refund as a result, inclusIQ will inform the Client of the refund due and it will be paid within 30 days using the same method originally used by the Client. These Terms and Conditions shall continue to apply to any modified version of the Services unless it is expressly stated otherwise.

14. **Support**

14.1 Where the Services include Software inclusIQ shall provide support in terms of the support levels specified in Part 4 of the Schedule annexed to the Agreement.

14.2 When seeking support the Client shall use its reasonable endeavours to provide the fullest information possible to aid InclusIQ in diagnosing any faults in either the Services where they include Software or the Platform.

14.3 Whenever possible, inclusIQ shall provide a workaround solution to the Client to enable the Client's continued use of the Services or to enable use that is as close to normal as is possible under the prevailing circumstances.

15. **Maintenance**

15.1 inclusIQ shall be responsible for all maintenance and upgrades to the Platform which may from time to time be required.

15.2 Subject to the provisions of Clause 12.1, the Client shall be responsible for all maintenance and upgrades to the Client computer systems which may from time to time be required.

15.3 Whenever possible, inclusIQ shall use all reasonable endeavours to undertake maintenance work outside of the Client's business hours.

15.4 Where maintenance will disrupt the Service, inclusIQ shall aim to complete all

necessary work within 16 to 20 Business Hours or as soon as possible thereafter where resolution in that time is not possible.

- 15.5 Whenever possible, inclusIQ shall provide a workaround solution to the Client to enable the Client's continued use of the Service or to enable use that is as close to normal as is possible under the prevailing circumstances.

16. **Term and Termination**

- 16.1 The Agreement shall come into force on the agreed Commencement Date and shall continue for a defined Term from that date, subject to the provisions of this Clause 13.

- 16.2 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:

16.2.1 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within 10 Business Days of the due date for payment;

16.2.2 the other Party commits any other material breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within 10 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;

16.2.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;

16.2.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);

16.2.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);

16.2.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;

16.2.7 the other Party ceases, or threatens to cease, to carry on business; or

- 16.3 For the purposes of sub-Clause 13.2.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.

- 16.4 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

17. **Effects of Termination**

Upon the termination of the Agreement for any reason:

- 17.1 any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable;

- 17.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;
- 17.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which existed at or before the date of termination;
- 17.4 subject as provided in Clause 13 and except in respect of any accrued rights neither Party shall be under any further obligation to the other;
- 17.5 each Party shall (except to the extent referred to in Clause 8) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information; and
- 17.6 the Intellectual Property Rights licence granted under sub-Clause 3.3 shall terminate and the Client shall forthwith cease to use, either directly or indirectly, any such Intellectual Property Rights, and shall forthwith return to inclusIQ any such material in its possession or control.

18.

19. No Waiver

No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

20. Further Assurance

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.

21. Costs

Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.

22. Set-Off

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.

23. Assignment and Sub-Contracting

- 23.1 Subject to sub-Clause 19.2, the Agreement shall be personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably

withheld.

23.2 inclusIQ shall be entitled to perform any of the obligations undertaken by it through any Affiliate or through suitably qualified and skilled sub-contractors.

24. Time

24.1 All times and dates referred to in the Agreement shall be of the essence of the Agreement.

25. Relationship of the Parties

Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

26. Non-Solicitation

26.1 Neither Party shall, for the Term of the Agreement and for a defined period (which shall be defined in the Agreement) after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to the Agreement.

27. Third Party Rights

27.1 No part of the Agreement shall confer rights on any third parties.

28. Notices

28.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

28.2 Notices shall be deemed to have been duly given:

28.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

28.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

28.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

28.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

29. Entire Agreement

29.1 The Agreement contains the entire express agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

29.2 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

30. Counterparts

The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

31. Severance

In the event that one or more of the provisions of the Agreement and/or of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.

32. Law and Jurisdiction

32.1 The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of Scotland.

32.2 Any dispute, controversy, proceedings or claim between the Parties relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the Scottish courts.