

# FFT ASPIRE

## SOFTWARE AS A SERVICE (“SaaS”)

### TERMS AND CONDITIONS

The terms and conditions below are the general terms and conditions as amended or replaced from time to time (“Terms and Conditions”) which apply to the FFT Aspire software and related services (“FFT Aspire”). Please read the Terms and Conditions carefully before registering to use FFT Aspire. By ticking the box “I accept”, you agree to follow and be bound by the Terms and Conditions in your use of FFT Aspire, whether in connection with a paid or free trial subscription. If you are an individual entering into the Terms and Conditions on behalf of an organisation, you represent that you have authority to bind such organisation to the Terms and Conditions. If you do not have authority or you do not accept the Terms and Conditions you will be unable to use FFT Aspire. We may amend the Terms and Conditions at any time by reasonable notice. You are expected to check this page and the FFT website from time to time to check for any amendments.

#### Interpretation

- (a) The definitions and rules of interpretation in this clause apply in this Agreement.

**Agreement:** the agreement between FFT and the Customer for the supply of Services comprising the Terms and Conditions, Order Form, Terms of Use and Materials.

**Authorised User:** an individual end user of the Customer who is authorised by the Customer to access and use the Services (wholly or in part) using their own unique identifier provided by FFT in accordance with the Terms of Use, as defined below.

**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 12.6 or clause 12.7.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

**Customer:** schools, local authorities, academy trusts, and dioceses who access and use the Services on the basis of:

- (a) a free trial subscription (**Free Trial Customer**); or
- (b) a paid subscription, whereby the Subscription Fees are paid by them to FFT directly (**Directly Paying Customer**); or
- (c) a paid subscription, whereby the Subscription Fees are paid by them to FFT indirectly (**Indirectly Paying Customer**) via a Directly Paying Customer.

The term **Customer** shall include Free Trial Customers, Directly Paying Customers and Indirectly Paying Customers.

**Customer Data:** any data uploaded to the FFT Portal by a Customer comprised in the Portal Data from time to time and more particularly described in the Materials.

**Customer Direct Data:** any Customer Data relating to a Customer which is directly supplied by that Customer to another Customer using the FFT portal, rather than by FFT.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**Derived Data:** any FFT Data (wholly or in part) Manipulated to such a degree that it:

- (a) cannot be identified as originating or deriving directly from the FFT Data or the Services and cannot be reverse-engineered such that it can be so identified; and
- (b) is not capable of use substantially as a substitute for the FFT Data or the Services.

**Effective Date:** the date on which the Customer accepts the Terms and Conditions on registration for the FFT Portal at which point this Agreement shall come into existence.

**Portal Data:** the data supplied by FFT to the Customer including the Government Data, the Customer Data, and the FFT Data.

**FFT Portal:** the FFT Aspire software which provides access to the Portal Data.

**Initial Subscription Term:** the initial term of the paid subscription as specified in the Order Form received by the Directly Paying Customer or as notified to the Indirectly Paying Customer upon registration of the FFT Portal.

**FFT Data:** all data comprised in the Portal Data from time to time, other than the Government Data and the Customer Data and more particularly described in the Materials.

**Free Trial Subscription Term:** the term of the free trial subscription as specified in the Order Form received by the Free Trial Customer or as notified upon registration of the FFT Portal.

**Government:** the Department for Education in England or the Welsh Government in Wales.

**Government Data:** the pupil data provided by the Department for Education in England or the Welsh Government in Wales comprised in the Portal Data from time to time and more particularly described in the Materials.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Manipulate:** to combine or aggregate the FFT Data (wholly or in part) with other data or information or to adapt the FFT Data (wholly or in part).

**Manipulated Data:** any FFT Data that has been Manipulated. Manipulated Data includes any Derived Data.

**Materials:** any online information, guidance, policies and procedures (as amended or replaced from time to time) relating to the Services, which are available to the Customer and the Authorised User on the FFT Portal or the FFT website (as the case may be) and which shall form part of this Agreement.

**Normal Business Hours:** 8.30am to 5.30pm local UK time, each Business Day.

**Order Form:** the online description or specification of the Services and other service terms (including the quotation) provided by FFT to the Directly Paying Customer or Free Trial Customer, which incorporates the Terms and Conditions, and which shall form part of this Agreement.

**Permitted Use:** the use of the Services by Customers and Authorised Users for the purpose set out in clause 3.1

**Renewal Period:** the period described in clause 15.1(b).

**Security Breach:** any security breach relating to:

- a) the Portal Data reasonably determined by FFT to be sufficiently serious or substantial to justify notification to the Information Commissioner; or
- b) the Portal Data reasonably determined by FFT to be sufficiently serious or substantial to give rise to a material risk of litigation by the individuals whose Portal Data is the subject of the breach.

**Security Features:** any security feature provided by FFT to the Customer or Authorised Users, including any key, PIN, password, token or smartcard.

**Services:** the services to be supplied by FFT to the Customer under this Agreement including access to the FFT Portal and the supply of Portal Data, Materials and Support Services as set out in the Order Form, the FFT Portal or the FFT Website (as the case may be).

**Software:** the online software applications provided by FFT as part of the Services.

**Subscription Fees:** the subscription fees payable by a Directly Paying Customer to FFT for the Services, as set out in FFT's invoice.

**Subscription Term:** has the meaning given in clause 15.1(b) (being the Free Trial Subscription Term or the Initial Subscription Term together with any subsequent Renewal Periods).

**Support Services:** the support services to be supplied by FFT as described on the FFT website.

**System:** any information technology system or systems owned or operated by the Customer which receives any Portal Data in accordance with this Agreement, including the Customer's data processing facilities, data files and documents needed for processing.

**Terms of Use:** the terms and conditions applicable to an Authorised User using the Services, which shall form part of this Agreement.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

- (b) Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- (c) A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- (d) A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (e) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- (f) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- (g) A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.

(h) A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

(i) A reference to writing or written includes e-mail but not faxes.

(j) References to clauses are to the clauses of this Agreement.

## **2. Services**

2.1 FFT shall, during the Subscription Term, provide the Services to the Customer on and subject to the Terms and Conditions of this Agreement.

2.2 FFT shall:

- (a) ensure that the FFT Portal is 99.5% available 24 hours a day, 7 days a week, excluding any planned maintenance and loss of internet connectivity between the FFT Portal and the Customer;
- (b) use commercially reasonable endeavours to provide the Customer with at least 24 hours' notice in advance of any planned or unscheduled maintenance works by placing a notice on the FFT Portal or the FFT website (as the case may be);
- (c) provide the Customer with the Support Services during Normal Business Hours;
- (d) back up the Portal Data daily for 30 days in accordance with its archiving and back-up procedures;
- (e) use reasonable commercial endeavours to restore any Portal Data which is lost or damaged by FFT; and
- (f) comply with its data privacy and security policies in respect of the Portal Data.

2.4 Notwithstanding the foregoing, FFT:

- (a) shall not be responsible for any non-conformance which is caused by use of the Services contrary to FFT's instructions, or modification or alteration of the Services by any party other than FFT;
- (b) shall not be responsible for the transfer and use of the Customer Direct Data or any loss, destruction, alteration or disclosure of the Customer Direct Data caused by the Customer or any third party;
- (c) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements;
- (d) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data (whether the Portal Data or otherwise) over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and
- (e) shall not be responsible for any loss, destruction, alteration or disclosure of Portal Data caused by the Customer or any third party (except those third parties sub-contracted by FFT to perform services related to Portal Data maintenance and back-up for which it shall remain fully liable).

2.5 This Agreement shall not prevent FFT from entering into similar agreements with third parties, or from independently developing, using, selling or licensing, products and/or services which are similar to those provided under this Agreement.

- 2.6 FFT warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.
- 2.7 FFT may change at any time, with as much notice to the Customer as is reasonably practicable, the content, format or nature of Portal Data or the Services and the means of access to the Portal Data or the Services.
- 2.8 FFT may amend the Terms and Conditions of this Agreement at any time by reasonable notice in writing on the FFT Portal or the FFT website (as the case may be).

### **3. Licence**

- 3.1 The Customer shall use the Services for educational purposes, including (without limitation), the purpose of improving both pupil outcomes and school performance but specifically excluding commercial purposes, including (without limitation) the sale and transfer or licensing to a third party of, for consideration (of any amount), the Portal Data and or the Materials.
- 3.2 The Customer grants to FFT a non-exclusive, non-transferable, revocable licence for FFT to use its Customer Data for the purpose of:
- (a) delivering the Services to the Customer during the Subscription Term; and
  - (b) carrying out national, regional and local research, analytical and benchmarking services during the Subscription Term and for a period of 48 months after the Subscription Term has terminated.
- 3.3 FFT grants to the Customer a non-exclusive, non-transferable, revocable, licence for the Permitted Use only during the Subscription Term, subject to the Customer User Restrictions, to:
- (a) access the FFT Portal and view the Portal Data;
  - (b) Manipulate the Portal Data and create Derived Data;
  - (c) store the Portal Data and Manipulated Data on the System;
  - (d) distribute the Portal Data and Manipulated Data to Authorised Users on the System; and
  - (e) use (but not modify) the Materials in support of the activities referred to in this clause 3.
- 3.4 Except as expressly provided in this Agreement, the Customer shall not:
- (a) use the FFT Data, Government Data or the Materials (wholly or in part) in its products or services;
  - (b) redistribute the FFT Data, Government Data or the Materials (wholly or in part); or
  - (c) sell, share, publish or otherwise transmit the FFT Data, Government Data or the Materials in the public domain.
- 3.5 A Directly Paying Customer shall not grant access to any new Indirectly Paying Customer part way through the Initial Subscription Term or Renewal Period (as applicable) unless FFT has agreed to grant the new Indirectly Paying Customer access, the Subscription Fees have been varied pursuant to clause 10.7, and the new Indirectly Paying Customer has registered to use the FFT Portal in accordance with the provisions of this Agreement.
- 3.6 The Customer shall observe the Customer User Restrictions set out in clause 9.

#### 4. Data Processing

4.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 4 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

4.2 The parties acknowledge that:

- (a) they shall not process or transfer any personal data comprised in the FFT Data or Government Data outside the United Kingdom;
- (b) if FFT processes any personal data comprised in the Customer Data on behalf of the Customer when performing its obligations under this Agreement, FFT will be regarded as a processor and the Customer will be regarded as a controller for the purposes of the Data Protection Legislation;
- (c) if the Customer processes any personal data comprised in the FFT Data on behalf of FFT when performing its obligations under this Agreement, the Customer will be regarded as the processor and FFT will be regarded as the controller;
- (d) if the Customer processes any personal data comprised in the Government Data on behalf of the Government and FFT when performing its obligations under this Agreement the Customer will be regarded as the processor and FFT and the Government will each be regarded as a controller for the purposes of the Data Protection Legislation;
- (e) if the Customer uses the FFT Portal to share Customer Direct Data they will be regarded as the controller and the Customer receiving the Customer Direct Data will be regarded as a processor for the purposes of the Data Protection Legislation;
- (f) each party acting as a controller shall ensure that they have all the necessary appropriate consents and notices in place to transfer the relevant personal data to the processor so that the processor may lawfully use, process and transfer the personal data in accordance with this Agreement on their behalf;
- (g) each party acting as a processor shall process the personal data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the controller from time to time unless they are required by the laws of any member of the European Union or by the laws of the European Union applicable to FFT and/or Domestic UK Law (where **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (**Applicable Laws**). Where the processor is relying on Applicable Laws as the basis for processing personal data, they shall promptly notify the controller of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the processor from so notifying the controller;
- (h) each party shall take appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. These measures shall be proportionate 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;
- (i) each party shall assist the other party, at their own 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;

- (j) each party shall notify the other party without undue delay on becoming aware of a personal data breach;
- (k) each party shall, at written direction of the other party, to the extent technically practicable, delete or return personal data and copies thereof to the other on termination of the Agreement unless required by Applicable Law to store the personal data; and
- (l) each party shall maintain complete and accurate records and information to demonstrate its compliance with this clause 4 and immediately inform the other party if an instruction infringes the Data Protection Legislation.

4.3 The Customer consents to FFT appointing a third-party processor of personal data under this Agreement. FFT confirms that it will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 4 and in either case which FFT confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and FFT, FFT shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 4.

4.4 FFT may, at any time on not less than 30 days' notice, revise this clause 4 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.

## **5. Customer's obligations**

5.1 The Customer shall:

- (a) 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;
- (b) only make copies of the Government Data or FFT Data to the extent reasonably necessary for the Permitted Use (which, for clarity, includes back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing of the Portal Data);
- (c) not extract, re-utilise, use, exploit, redistribute, disseminate, copy or store the Government Data or FFT Data other than for the Permitted Use;
- (d) authorise other Customers to receive its Customer Direct Data using the FFT Portal and have sole responsibility for this data;
- (e) have sole responsibility for ensuring that any Customer Direct Data it receives is used in accordance with the provisions of this Agreement;
- (f) not do anything that may materially damage the reputation of FFT;
- (g) work with FFT to promote the FFT Portal to Authorised Users;
- (h) not perform the Services in any way contrary to any law or regulation or any regulatory code, guidance or request including any Data Protection Legislation requirements;
- (i) deal with any support requests from Authorised Users about the Portal Data or the FFT Portal;
- (j) forward to FFT any support requests from Authorised Users which have been fully investigated in the first instance by the Customer but need support from FFT (of the kind the Customer is not able to provide) to resolve;

- (k) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;
- (l) promptly comply with any minimum hardware, web-browser and software configuration requirements specified by FFT for the purpose of establishing connectivity between the System and the Services and bear the costs of establishing that connectivity;
- (m) obtain and shall maintain all necessary licences, consents, and permissions necessary for FFT to perform its obligations under this Agreement, including without limitation the Services; and
- (n) be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its Systems to FFT'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.

5.2 The parties acknowledge that:

- (a) the Customer will respond to enquiries from data subjects and the Information Commissioner concerning the processing of the Portal Data by the Customer; and
- (b) if the Customer is unable to respond, clause 5.3 and clause 5.4 shall apply.

5.3 If the Customer receives any complaint, notice or communication that relates directly or indirectly to the processing of the Portal Data or to either party's compliance with the Data Protection Legislation, it shall immediately notify FFT and it shall provide FFT with full co-operation and assistance in relation to any such complaint, notice or communication.

5.4 The Customer shall notify FFT within 2 working days if it receives a request from a data subject and it shall provide FFT with full co-operation and assistance and bear the costs, in relation to any such request.

5.5 The Customer shall take reasonable steps to ensure the reliability of all its Authorised Users who have access to the FFT Portal and Portal Data.

5.6 The Customer shall ensure that all its Authorised Users:

- (a) are informed of the confidential nature of the Portal Data;
- (b) have read and understood the Terms of Use;
- (c) have read and understood the content in the Materials;
- (d) have undertaken training in the laws relating to the handling of personal data, in particular, sufficient training in data protection and security to enable them to comply with the Data Protection Legislation; and
- (e) are aware of both the Customer's duties and their personal duties and obligations under such laws and this Agreement.

5.7 The Customer shall ensure that access to the Portal Data and the FFT Portal is limited to:

- (a) those Authorised Users who need access to them for the Permitted Use; and
- (b) in the case of any access by any employee, such part or parts of the Portal Data and the FFT Portal as is or are strictly necessary for performance of that employee's duties.

5.8 The Customer shall notify FFT immediately if it becomes aware of any advance in technology and methods of working that mean that the Customer should revise the security measures set out in or referred to in this Agreement.

## **6. Audit**

6.1 The Customer shall keep, in paper or electronic form accurate and up-to-date records (Records) containing evidence of its compliance with its warranties and obligations under this Agreement (together, **Customer's Audit Obligations**) and showing the steps taken by the Customer to comply with the Customer User Restrictions and the Data Protection Legislation, in each case, during the Subscription Term. The Customer shall ensure that the Records are sufficient to enable FFT to verify the Customer's compliance with its obligations under this clause 6.

6.2 The Customer shall permit FFT and its third-party representatives (which, in respect of the Government Data, will comprise any independent or impartial inspection agents or auditors, selected by FFT and not reasonably objected to by the Customer), on reasonable notice during Normal Business Hours, but without notice in case of any reasonably suspected breach of this clause 6, to:

- (a) gain (physical and remote electronic) access to, and take copies of, the Records and any other information held at the Customer's premises or on the System; and
- (b) inspect all Records and Systems relating to the use, Distribution, Redistribution, permissioning and control of the Portal Data and the Services, for the purpose of reviewing the Customer's compliance with the Customer's Audit Obligations. Such audit rights shall continue for one year after termination of this Agreement. The Customer shall give all necessary assistance to the conduct of such audits during the term of this Agreement and for a period of one year after termination of this Agreement.

6.3 Any request by FFT to exercise its rights under clause 6.2 will, insofar as it relates to any Government Data or FFT Data (wholly or in part), be subject to any necessary consent or approval from a regulatory or supervisory authority within the country of the Customer, which consent or approval the Customer will attempt to obtain in a timely fashion.

## **7. Security and Passwords**

7.1 The Customer shall ensure that the Portal Data and Materials are kept secure by using the Security Features and in an encrypted form, and shall use the best available security practices and systems applicable to the use of the Portal Data and Materials to prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Portal Data and the Materials.

7.2 Where FFT uses Security Features in relation to the Services (wholly or in part), the Security Features must, unless FFT notifies the Customer otherwise, be kept confidential and not lent, shared, transferred or otherwise misused.

7.3 If the Customer becomes aware of any misuse of the Portal Data or the Materials, or any Security Breach in connection with this Agreement that could compromise the security or integrity of the Portal Data or the Materials or otherwise adversely affect FFT, or if the Customer learns or suspects that any Security Feature has been revealed to or obtained by any unauthorised person, the Customer shall, at the Customer's expense, promptly notify FFT and fully co-operate with FFT to remedy the issue as soon as reasonably practicable.

7.4 The Customer agrees to co-operate with FFT's reasonable security investigations.

- 7.5 Immediately following any Security Breach, the parties shall coordinate with each other to investigate the Security Breach. The Customer agrees to reasonably co-operate with FFT in FFT's handling of the matter, including:
- (a) assisting with any investigation;
  - (b) providing FFT with physical access to any facilities and operations affected;
  - (c) facilitating interviews with the Customer's employees, former employees and others involved in the matter; and
  - (d) making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Legislation requirements or as otherwise required by FFT.
- 7.6 FFT's obligations under clause 7.4 and clause 7.5 shall be performed at the Customer's reasonable expense, except to the extent that the Security Breach arose out of any negligence or wilful default of FFT.
- 7.7 FFT may change Security Features on notice to the Customer or the Authorised Users for security reasons.
- 7.8 The Customer shall take reasonable precautions to preserve the integrity of any Portal Data processed by it and to prevent any corruption or loss of such Portal Data.

## **8. Unauthorised Use**

If any unauthorised use is made of the Portal Data or Materials and such use is attributable to the act or default of the Customer, Authorised User or a third party that has acquired the Portal Data or Materials from the Customer (including breach of any Customer User Restrictions) then, without prejudice to FFT's other rights and remedies:

- (a) a Directly Paying Customer shall immediately be liable to pay FFT an amount equal to the Subscription Fee; or
- (b) an Indirectly Paying Customer or Free Trial Customer shall immediately be liable to pay FFT a fixed fee of £1,000.

## **9. Customer User Restrictions**

- 9.1 The Customer shall limit access to the Services to the Authorised Users and ensure that all Authorised Users shall:
- (a) only make copies of the Portal Data and the Materials to the extent reasonably necessary for the following purposes: back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing;
  - (b) not sell, share, publish or otherwise transmit the Portal Data or the Materials in the public domain;
  - (c) not use the Services for any purpose contrary to any law or regulation or any regulatory code, guidance or request;
  - (d) not extract, reutilise, use, exploit, redistribute, disseminate, copy or store the Portal Data or the Materials for any purpose not expressly permitted by this Agreement;
  - (e) not copy, modify, decompile, reverse engineer or create derivative works from the FFT Portal, except to the extent permitted by any applicable law; and

- (f) not do anything that may damage the reputation of FFT, the Portal Data or the Services, including by way of using the Portal Data (wholly or in part) in any manner that is pornographic, racist or that incites religious hatred or violence.

## **10. Charges and payment**

- 10.1 Upon receipt of the Order Form by the Directly Paying Customer the Subscription Fees shall be due and payable in full to FFT in advance.
- 10.2 The Directly Paying Customer shall on or before the Effective Date provide to FFT its approved purchase order information acceptable to FFT and any other relevant valid, up-to-date and complete contact and billing details and FFT shall invoice the Directly Paying Customer:
  - (a) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
  - (b) subject to clause 15.1(b), at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,and the Directly Paying Customer shall pay each invoice within 30 days after the date of such invoice.
- 10.3 Time shall be of the essence regarding the Directly Paying Customer's obligations to make payments in accordance with this clause 10 and such obligations are material obligations for the purpose of clause 15.2.
- 10.4 If FFT has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of FFT:
  - (a) FFT may, without liability, disable all passwords, accounts and access to all or part of the Services for a Directly Paying Customer and all Indirectly Paying Customers under a Directly Paying Customer's subscription and FFT shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 5% over the then current base lending rate of FFT's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 10.5 All amounts and fees stated or referred to in this Agreement:
  - (a) shall be payable in pounds sterling;
  - (b) are, subject to clause 14.3(a), non-cancellable and non-refundable; and
  - (c) are exclusive of value added tax, which shall be added to FFT's invoice(s) at the appropriate rate.
- 10.6 FFT shall be entitled to increase the Subscription Fees at the start of each Renewal Period upon no less than 60 days' prior written notice to the Directly Paying Customer.
- 10.7 If, pursuant to clause 3.5, a new Indirectly Paying Customer is added to a Directly Paying Customer's subscription part way through the Initial Subscription Term or any Renewal Period (as applicable), the said Directly Paying Customer and FFT shall agree to a variation to the Subscription Fees and such fees shall be pro-rated from the date on which the new Indirectly Paying Customer registers to use the FFT Portal for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

## **11. Intellectual Property Rights**

- 11.1 The Customer acknowledges and agrees that FFT and/or its licensors own all Intellectual Property Rights in the Software, Materials and the FFT Data except as expressly stated in this Agreement. This Agreement does 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 Software, FFT Data or the Materials.
- 11.2 FFT confirms that it has all the rights in relation to the Software, FFT Data or the Materials that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.
- 11.3 The Customer assigns to FFT, and shall assign to it, with full title guarantee all Intellectual Property Rights in any development of the Materials and in any Manipulated Data it may create, by way of future assignment.
- 11.4 The Customer shall and shall use all reasonable endeavours to procure that any necessary third party shall, at FFT's cost, promptly execute such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.
- 11.5 The Customer shall co-operate with FFT to protect the goodwill and reputation of FFT and the Services and shall not use any trademarks and or logos or trading styles of FFT (whether registered or unregistered) in a manner that would damage such goodwill and reputation of FFT and the Services.
- 11.6 Any display of the Services by the Customer shall credit, wherever technically and commercially feasible, FFT, any licensor of FFT or any other source of the Portal Data specified by FFT as the source of the Portal Data.
- 11.7 The Customer acknowledges that reference in any element of the Materials to trade names or proprietary products where no specific acknowledgement of such names or products is made does not imply that such names or products may be regarded by the Customer as free for general use, outside the scope of the use of the Materials authorised by this Agreement.

## **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:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - (d) 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 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 12.6 The Customer acknowledges that the FFT Data, details of the Services, the Materials and the results of any performance tests of the Services, constitute FFT's Confidential Information.
- 12.7 FFT acknowledges that the Customer Data is the Confidential Information of the Customer.
- 12.8 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.
- 12.9 The above provisions of this clause 12 shall survive termination of this Agreement, however arising.

### **13. Indemnity**

- 13.1 The Customer shall defend, indemnify and hold harmless FFT against any third party claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees and other professional costs) arising out of or in connection with the following:
- (a) any breach by the Customer of the terms of this Agreement;
  - (b) any personal data breach by the Customer (whether acting as a controller or processor);
  - (c) any actual or alleged infringement by the Customer of a third party's Intellectual Property Rights; and
  - (d) any breach of confidentiality by the Customer.

provided that:

- (a) the Customer is given written notice of any such claim by FFT as soon as reasonably practicable;
  - (b) FFT provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - (c) the Customer is given sole authority to defend or settle the claim.
- 13.2 In the event of a claim under clause 13.1 FFT may terminate this Agreement immediately by notice in writing to the Customer and disable all passwords, accounts and access to all or part of the Services for the Customer (to include the Directly Paying Customer and all Indirectly Paying Customers under the Directly Paying Customer's subscription).

## **14. Limitation of liability**

14.1 Except as expressly and specifically provided in this Agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use. FFT shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to FFT by the Customer in connection with the Services, or any actions taken by FFT at the Customer's direction;
- (b) 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 this Agreement; and
- (c) the Services are provided to the Customer on an "as is" basis.

14.2 Nothing in this Agreement excludes the liability of FFT:

- (a) for death or personal injury caused by FFT's negligence; or
- (b) for fraud or fraudulent misrepresentation.

14.3 Subject to clause 14.1 and clause 14.2:

- (a) FFT shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
- (b) FFT's total aggregate liability in contract (, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to:
  - (i) the total Subscription Fees paid during the 12 months immediately preceding the date on which the claim arose for a Directly Paying Customer; or
  - (ii) a fixed sum of £1,000 for a Free Trial Customer or an Indirectly Paying Customer.

14.4 Without limiting the effect of the other provisions of this clause 14, if this Agreement is terminated for any reason, FFT shall not be liable:

- (a) to provide the Customer with any Portal Data or any product, service or solution relating to any Portal Data; or
- (b) (b) for the consequences of the inability of the Customer to comply with the terms of any other arrangements that the Customer may have entered into with any third party.

## **15. Term and termination**

15.1 This Agreement shall commence on the Effective Date and shall continue for:

- (a) the Free Trial Subscription Term until the earlier of:
  - (i) the end of the Free Trial Subscription Term;
  - (ii) the commencement date of The Initial Subscription Term as a result of a subscription being purchased;

- (iii) termination of the free trial subscription by the Free Trial Customer during the Free Trial Subscription Term for any reason; or
- (iv) termination of the free trial subscription during the Free Trial Subscription Term by FFT for any reason.

or

- (b) the Initial Subscription Term, unless terminated earlier in accordance with clause 10.4, 13.2 or clause 15.2. The Initial Subscription Term shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:
  - (i) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
  - (ii) otherwise terminated in accordance with the provisions of this Agreement;

and the Free Trial Subscription Term or the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **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:

- (a) 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;
- (b) the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- (d) 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, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (e) 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;
- (f) 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;
- (g) 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;
- (h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

- (i) 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;
- (j) 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;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2(d) to clause 15.2(j) (inclusive);
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (m) there is a change of control of the other party.

**15.3** On termination of this Agreement for any reason:

- (a) the Customer shall immediately pay any outstanding amounts owed to FFT under this Agreement;
- (b) all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services;
- (c) subject to clause 15.3(d) each party shall return and make no further use of any equipment, property, and other items (and all copies of them) belonging to the other party;
- (d) the Customer shall at its own cost make a copy of the most recent Customer Data, no later than 5 days after the Effective Date of the termination of this Agreement;
- (e) FFT may destroy or otherwise dispose of any of the Customer Data in its possession, unless the Customer is unable to make a copy of the most recent Customer Data in accordance with clause 15.3(d) and FFT receives, no later than ten days after the date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. FFT shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by FFT in returning or disposing of Customer Data; and
- (f) 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**

FFT 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 FFT 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. Conflict**

If there is an inconsistency between any of the Terms and Conditions of this Agreement, the Order Form, the Customer's purchase order or confirmation of order (if applicable) or specifications, the FFT Portal and the FFT website, unless otherwise stated, the Terms and Conditions of this Agreement shall prevail followed by the Order Form, the FFT Portal, the FFT website and the Customer's purchase order or confirmation of order (if any) or specifications.

**18. Waiver**

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.

**19. Rights and remedies**

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.

**20. Severance**

20.1 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.

20.2 If any provision or part-provision of this Agreement is deemed deleted under clause 20.1 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.

**21. Entire agreement**

21.1 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.

21.2 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.

21.3 Each party agrees that it shall have no claim for negligent misrepresentation based on any statement in this Agreement.

21.4 Nothing in this clause shall limit or exclude any liability for fraud.

**22. Assignment**

22.1 The Customer shall not, without the prior written consent of FFT, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

22.2 FFT 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.

**23. No partnership or agency**

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).

**24. Third party rights**

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.

**25. Notices**

25.1 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 email to the other party's email address as may have been notified by that party for such purposes. .

25.2 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).

**26. Governing law**

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.

**27. Jurisdiction**

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).