

Ten Kites Ltd Terms and Conditions

These Terms and Conditions set out Ten Kites' and the Customer's legal rights and obligations in relation to the Platform, Portal and Services.

1. Definitions and interpretation

1.1 In the Agreement:

"Acceptable Use Policy" means the acceptable use policy set out in Schedule 1 to these Terms and Conditions, as it may be updated from time to time by Ten Kites publishing a new version in the Portal;

"Addendum" means any written addendum agreed by the parties setting out particular rights and obligations of the parties with respect to Additional Services;

"Additional Services" means those services identified as such in the Services Order Form (if any);

"Agreement" means the agreement between the Customer and Ten Kites for the provision of the Portal as a service, incorporating:

- (a) the Services Order Form;
- (b) these Terms and Conditions;
- (c) the Schedules;
- (d) any Addendum or Addenda,

and any amendments to those documents from time to time;

"Agreement Period" means:

- (a) the period: (i) commencing on the Effective Date; and (ii) ending after the period specified in the Services Order Form following the Reference Date; or
- (b) the period specified in the Services Order Form commencing at the end of each Agreement Period;

"Authorised Users" means the officers, employees, agents, subcontractors, suppliers and service providers of:

- (a) the Customer; and
- (b) entities controlled by the Customer, or under common control with the Customer;

"Billing Period" means the period of time specified on the Services Order Form, commencing:

- (a) on the Reference Date; or
- (b) at the end of a previous Billing Period;

"Business Day" means any weekday, other than a bank or public holiday in England;

"Business Hours" means between 09:00 and 17:30 GMT/BST on a Business Day;

"Charges" means the amounts payable by the Customer to (i) Ten Kites; or (ii) where the Customer has signed up for the Platform, Portal or Services with Fourth, the relevant Fourth entity, under or in relation to the Agreement, including the Charges set out in the Services Order Form or referred to in the Service Statement, as varied from time to time in accordance with the Agreement;

"Confidential Information" means the Customer Confidential Information and/or the Ten Kites Confidential Information;

"Customer" means the person (natural or legal) identified as Ten Kites' customer on the Services Order Form;

"Customer Confidential Information" means:

- (a) any information disclosed by the Customer to Ten Kites before the end of the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure: (i) was marked or described as "confidential"; or (ii) should have been reasonably understood by Ten Kites to be confidential; and
- (b) Customer Data;

"Customer Data" means all data uploaded to, collected using, stored on, processed using or transmitted via the Portal by the Customer, on the Customer's behalf, or by any person using any User Account (which may include menu, recipe, nutrition and allergen data);

"Customer Designs" means any proprietary designs and proprietary design materials provided by or on behalf of the Customer to Ten Kites for incorporation or use in the creation of the Menu Pages;

"Customer Personal Data" means any Personal Data that is processed by Ten Kites on behalf of the Customer in relation to the Agreement;

"Data Protection Laws" means all applicable laws relating to the processing of Personal Data including, while it is in force and applicable to Customer Personal Data, the General Data Protection Regulation (Regulation (EU) 2016/679);

"Design Services" means either:

- (a) the creation of a Menu Page or Menu Pages by Ten Kites for the Customer, including the incorporation of Customer Designs into such Menu Pages; or
- (b) the translation of Customer Designs into Menu Pages,

as specified in the Services Order Form or otherwise agreed by the parties in writing from time to time;

"Effective Date" means the date specified in the Services Order Form;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other

malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"**Fourth**" means Fourth Limited, Fourth USA Inc or Redbook Connect LLC (dba HotSchedules) as the case may be;

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing-off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"**Menu Pages**" means a web page layout created by Ten Kites for the Customer that is used to display menu information using the Customer Data;

"**Outlet**" means one of the following, as defined in the Services Order Form:

- (a) a specific restaurant;
- (b) a distinct catering unit; or
- (c) a postal address,

at which one or more Public Interfaces are available (or it shall have such other meaning as may be specified in the Services Order Form);

"**Personal Data**" has the meaning given to it in the Data Protection Laws applicable in the UK from time to time;

"**Platform**" means the hardware and software platform managed by Ten Kites that will be used to host the Portal;

"**Portal**" means the *Ten Kites* software, which will be made available by Ten Kites to the Customer as a service via the internet under these Terms and Conditions, including any such software used to provide Additional Services;

"**Private Interface**" means any private interface through which data stored by the Portal is made available to Authorised Users by the Customer;

"**Public Interface**" means a publicly-available website or other public interface, through which data stored by the Portal is made available by the Customer;

"**Reference Date**" means:

- (a) if this Agreement supersedes a previous contract between the parties for services equivalent to the Services, the date upon which the final period of Services paid for under that previous contract ends;
- (b) otherwise, the date when the Portal is first made available to the Customer for live use;

"**Schedule**" means a schedule to these Terms and Conditions;

"**Services**" means:

- (a) all the services provided or to be provided by Ten Kites to the Customer using the Portal;
- (b) any Design Services;
- (c) the Support Services; and
- (d) any Additional Services;

"Service Statement" means the statement set out in Schedule 2 to these Terms and Conditions;

"Services Order Form" means the form made available by (i) Ten Kites; (ii) Fourth, in each case to the Customer to enable the Customer to sign up for the Services, whether online or offline as it may be updated from time to time by the agreement of the parties;

"Support Contact" means a person appointed by the Customer and notified in writing to Ten Kites who will be responsible for requesting Support Services from Ten Kites and communicating with Ten Kites in relation to the Support Services;

"Support Services" means the provision of support and assistance in relation to the use of the Portal and the publication of Menu Pages through Public Interfaces and Private Interfaces;

"Ten Kites" means Ten Kites Limited, a company incorporated in England and Wales (registration number 08596008) having its registered office at 139 Kingston Road, London, SW19 1LT;

"Ten Kites Confidential Information" means:

- (a) any information disclosed by Ten Kites to the Customer before the end of the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure: (i) was marked or described as "confidential"; or (ii) should have been reasonably understood by the Customer to be confidential; and
- (b) the financial terms of the Agreement;

"Term" means the term of the Agreement;

"Terms and Conditions" means these terms and conditions, as they may be varied from time to time in accordance with Clause 17.4; and

"User Account" means a user account in the Portal created by the Customer or created for the Customer by Ten Kites.

1.2 If the parties have entered into any Addenda, then those Addenda may supplement or modify the meanings of the terms defined in Clause 1.1.

1.3 In the Agreement, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

- 1.4 References to Clauses are to the clauses of these Terms and Conditions; while references to Paragraphs are the paragraphs of an Addendum.
- 1.5 The Clause and Paragraph headings do not affect the interpretation of the Agreement.
- 1.6 In the Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

2. Agreement and Term

- 2.1 The Agreement will come into force on the Effective Date.
- 2.2 Once in force, the Agreement will continue in force indefinitely, unless and until terminated in accordance with its express terms.

3. Platform and Portal

- 3.1 Ten Kites shall:

- (a) provide to the Customer any Design Services specified in the Services Order Form or agreed by the parties in writing; and
- (b) enable the Customer to access the Portal,

in accordance with any timetable agreed by the parties in writing and, if no such timetable has been agreed, within a reasonable period.

- 3.2 Subject to Clauses 3.3 and 3.4, Ten Kites hereby grants to the Customer a non-exclusive licence to:

- (a) use the Portal via the internet by means of web browsers and User Accounts for the Customer's own business purposes;
- (b) use the Portal to publish Menu Pages by means of Public Interfaces and Private Interfaces; and
- (c) permit Authorised Users to use Menu Pages through Private Interfaces to access Customer Data; and
- (d) permit any persons to use Menu Pages through Public Interfaces to access Customer Data,

in each case during the Term.

- 3.3 The Customer must:

- (a) permit only Authorised Users to use User Accounts, and ensure that only persons authorised by the Customer use the Portal via a User Account, and that the only user of a User Account is the person identified in that User Account;
- (b) ensure that all persons using a User Account are adequately trained in the use of the Portal;

- (c) comply at all times with the terms of the Acceptable Use Policy;
 - (d) ensure that all persons who use the Portal by means of a User Account or Private Interface comply with the Acceptable Use Policy and these Terms and Conditions;
 - (e) keep all User Account passwords confidential and secure, and only disclose such passwords to persons who are permitted to use the Portal in accordance with the provisions of this Clause 3;
 - (f) notify Ten Kites immediately if the Customer believes that a User Account password has been improperly disclosed or misused, or if a User Account has been accessed or used by any unauthorised person; and
 - (g) if the Charges are or may be affected by the number of Outlets, notify Ten Kites in advance of the making any changes to the number of Outlets.
- 3.4 Except to the extent mandated by applicable law or expressly permitted in the Agreement, the licence granted under Clause 3.2 is subject to the following prohibitions:
- (a) the Customer must not sub-license the Customer's rights to use the Portal and Services under the Agreement;
 - (b) the Customer must not modify or alter, or attempt to modify or alter, the Portal;
 - (c) the Customer must not hack or attempt to gain unauthorised access to any part of the Portal or Services; and
 - (d) the Customer must not sell or resell the Services without Ten Kites' prior written consent.
- 3.5 The Customer will be responsible for any misuse of the Portal arising out of any failure to comply with the provisions of this Clause 3, and subject to Clause 10.1 Ten Kites shall not be liable to the Customer in respect of any loss or damage arising out of any such misuse.
- 3.6 All Intellectual Property Rights in the Portal and Platform shall, as between the parties, be Ten Kites' exclusive property.
- 3.7 For the avoidance of doubt, the Customer has no right to access any computer code of the Portal or Platform (including source code, intermediate code and object code), either during or after the Term.
- 3.8 Ten Kites shall ensure that the Portal is available to the Customer in accordance with the Service Statement.
- 3.9 For the avoidance of doubt:
- (a) Ten Kites shall retain full control over the development and release of Portal updates and upgrades;
 - (b) the Customer shall have no right to require a delay to the development or application of any Portal update or upgrade;
 - (c) the Customer shall have no right to require the development of new modules

or functionality for the Portal; and

- (d) Ten Kites shall have no obligation to disclose development plans for the Portal to the Customer.

3.10 Ten Kites shall make daily back-ups of the data stored on the Platform. If the Customer suffers any loss or corruption of data stored on the Platform as a result of any breach by Ten Kites of the terms of the Agreement, then Ten Kites shall use all reasonable endeavours to restore such lost or corrupted data from the latest available back-up.

4. Support Services and Additional Services

4.1 Ten Kites shall provide the Support Services to the Customer in accordance with the Service Statement.

4.2 Upon the Effective Date or subsequently, the parties may agree that Ten Kites shall supply Additional Services to the Customer, in which case:

- (a) such Additional Services shall be provided subject to an Addendum;
- (b) in the event of a conflict between the applicable Addendum and the other elements of the Agreement, the applicable Addendum shall take precedence;
- (c) the Additional Services shall commence upon the date specified in the Services Order Form;
- (d) save to the extent that the applicable Addendum or the Services Order Form specifies otherwise, either party may cancel an Addendum (and the associated Additional Services) by giving to the other at least 30 days' written notice of termination, providing that the date of effective cancellation of the Addendum must at the end of an Agreement Period; and
- (e) all Addenda shall automatically be cancelled upon the date of effective termination of the Agreement.

5. Customer Data and Customer Designs

5.1 All the Intellectual Property Rights in Customer Data and Customer Designs will remain the Customer's property and the property of the Customer's licensors, subject to Clause 5.2.

5.2 The Customer grants to Ten Kites a non-exclusive licence to store, copy and otherwise use Customer Data and Customer Designs on and in relation to the Platform for the purposes of operating the Platform and Portal, providing the Services, fulfilling Ten Kites' obligations under the Agreement and exercising Ten Kites' rights under the Agreement. The Customer also grants to Ten Kites the right to sub-license these rights insofar as reasonably required for these purposes.

5.3 The Customer warrants and represents to Ten Kites that:

- (a) neither the Customer Data nor the Customer Designs will breach the terms of the Acceptable Use Policy;
- (b) the Customer Designs would not breach the terms of the Acceptable Use Policy if they were stored in the Portal; and

- (c) nutritional and allergen data included in the Customer Data is correct and will be kept up to date by the Customer.
- 5.4 If Ten Kites reasonably suspects that there has been a breach by the Customer of Clause 5.3, Ten Kites may:
 - (a) delete the relevant elements of Customer Data or Customer Designs; and/or
 - (b) suspend any or all of the Services and/or the Customer's access to the Portal while Ten Kites investigates the matter.
- 5.5 The Customer shall be responsible for the publication of Customer Data by means of a Public Interface or Private Interface, and must provide to all third parties viewing or using the Public Interface or Private Interface any information or notices necessary to ensure the safe use of the Customer Data. The Customer hereby indemnifies Ten Kites and undertakes to keep Ten Kites indemnified against any and all losses, expenses, costs, damages and liabilities arising directly or indirectly out of any failure of the Customer to comply with the terms of Clause 5.3(c) or this Clause 5.5.
- 5.6 Subject the Customer's express written agreement:
 - (a) Ten Kites may use the Customer Data for the purpose of creating aggregated data sets; and
 - (b) the Customer grants to Ten Kites a non-exclusive licence to store, copy and otherwise use the Customer Data for the purpose of creating and using such aggregated data sets.

Ten Kites must ensure that such aggregated data sets do not identify the Customer and do not contain any Customer Personal Data. For the avoidance of doubt, the Customer may not withdraw any such agreement given by the Customer in relation to Customer Data previously incorporated into an aggregated data set under this Clause 5.6.

6. Design Services

- 6.1 If the Services Order Form so specifies or the parties so agree in writing, Ten Kites shall provide Design Services to the Customer in accordance with the provisions of this Clause 6.
- 6.2 Ten Kites will make the Menu Pages available to the Customer in accordance with any timetable agreed by the parties in writing providing that:
 - (a) that timetable shall not be of the essence of the Agreement; and
 - (b) the Customer acknowledges that delays in the fulfilment of the Customer's obligations under the Agreement may lead to delays in the production and making available of the Menu Pages.
- 6.3 The Customer must promptly provide to Ten Kites:
 - (a) any assistance or co-operation reasonably requested by Ten Kites in connection with the supply of the Services; and
 - (b) in particular, feedback on any preparatory design work delivered or made

available by Ten Kites to the Customer.

- 6.4 Subject to Clause 6.4, all Intellectual Property Rights in the Menu Pages (excluding Customer Designs) shall, as between the parties, be Ten Kites' exclusive property. The Customer's rights to use the Menu Pages shall be governed by Clause 3.2.

7. Payments

- 7.1 Ten Kites (or where the Customer has purchased Services or a Portal through Fourth, the relevant Fourth entity) shall issue invoices to the Customer:
- (a) for Charges in respect of the use of the Portal during a Billing Period, in advance of that Billing Period; and
 - (b) for Design Services, in accordance with the payment schedule set out in the Services Order Form or otherwise agreed by the parties in writing.
- 7.2 All Charges stated in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise.
- 7.3 Charges with respect to the use of the Portal may vary in accordance with the number of Outlets, as specified in the Services Order Form. If the parties agree that one or more additional Portal modules will be made available to the Customer, then additional Charges will be payable in respect of those modules as agreed by the parties in writing. If the parties agree that any Additional Services will be provided to the Customer, then additional Charges will be payable in respect of those Additional Services as agreed by the parties in the relevant Addendum. In addition, Ten Kites may vary the Charges in respect of the use of the Portal and/or its prevailing time-based Charges rates by giving the Customer not less than 45 days' written notice of the variation, providing that the date of effective variation must be at the end of an Agreement Period. If the Customer objects to any variation of Charges under this Clause 7.3, the Customer's sole remedy is to terminate the Agreement in accordance with Clause 13.
- 7.4 The Customer must pay the Charges in respect of the use of the Portal to Ten Kites within 30 days following the issue of an invoice under Clause 7.1, and in any event before the commencement of the Billing Period in respect of which those Charges are payable. Where the Customer has purchased a Portal through Fourth, the Customer's payment obligations in respect of such Portal shall be satisfied by such Customer paying applicable Charges to Fourth.
- 7.5 The Customer must pay all other Charges to Ten Kites within 30 days following the issue of the relevant invoice. Where the Customer has purchased Services through Fourth, the Customer's payment obligations in respect of such Services shall be satisfied by such Customer paying applicable Charges to Fourth.
- 7.6 Charges must be paid by credit or debit card or bank transfer, or by such other means as Ten Kites may authorise from time to time.
- 7.7 If the Customer does not pay any amount properly due to Ten Kites under or in connection with the Agreement, Ten Kites may:
- (a) charge the Customer interest on the overdue amount at the rate of 10% per year above the Bank of England base rate from time to time (which interest will accrue daily and be compounded quarterly); or
 - (b) claim interest and statutory compensation from the Customer pursuant to

the Late Payment of Commercial Debts (Interest) Act 1998.

- 7.8 Ten Kites may suspend access to the Platform and Portal, and the provision of the Services if:
- (a) any amounts due to be paid by the Customer to Ten Kites, or Fourth (as the case may be) under the Agreement are overdue; and
 - (b) Ten Kites or Fourth (as the case may be) has given to the Customer at least 30 days' written notice of its intention to suspend such access and provision.

8. Publicity

- 8.1 Subject to the confidentiality restrictions in Clause 12 and unless the Customer has requested otherwise in writing, Ten Kites may publicly disclose that the Customer is a customer of Ten Kites for the Portal and Services, and may create, distribute and publicise case studies featuring the Customer as a customer of Ten Kites for the Portal and Services.

9. Warranties

- 9.1 Ten Kites warrants and represents to the Customer that:
- (a) Ten Kites has the legal right and authority to enter into and perform its obligations under the Agreement;
 - (b) Ten Kites will perform its obligations under the Agreement with reasonable care and skill; and
 - (c) the Portal will not infringe any person's Intellectual Property Rights (excluding patent rights) under English law.
- 9.2 The Customer warrants and represents to Ten Kites that:
- (a) the Customer has the legal right and authority to enter into and perform its obligations under the Agreement; and
 - (b) all the information that the Customer supplies to Ten Kites in relation to the Agreement (including all User Account information) is true, non-misleading, up to date and reasonably complete.
- 9.3 The Customer acknowledges that:
- (a) save as expressly provided in the Agreement, Ten Kites does not make any warranties or representations as to the nature or performance of the Platform, Portal or Services;
 - (b) complex software is never wholly free from defects, errors and bugs, and Ten Kites gives no warranty or representation that the Platform or Portal will be wholly free from such defects, errors and bugs;
 - (c) whilst Ten Kites shall use industry standard security measures to secure the Platform and Portal, complex software is never wholly free from security vulnerabilities, and Ten Kites gives no warranty or representation that the Platform or Portal will be wholly free from such vulnerabilities;
 - (d) Ten Kites does not warrant or represent that the Platform or Portal will be

compatible with any other application, program or software;

- (e) the Customer is responsible for determining whether the Platform, Portal and Services meet the Customer's requirements, and Ten Kites does not warrant or represent that the Platform, Portal or Services will meet those requirements;
- (f) transfers of unencrypted (or insufficiently encrypted) data via the internet are inherently insecure; and
- (g) Ten Kites will not and does not purport to provide any legal, taxation or accountancy advice under or in relation to the Agreement and (except to the extent expressly provided otherwise) Ten Kites does not warrant or represent that the Platform, Portal or Services will not give rise to any civil or criminal liability on the part of the Customer or any other person.

9.4 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in the terms of the Agreement. To the maximum extent permitted by applicable law and subject to Clause 10.1, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement.

10. Limitations and exclusions of liability

10.1 Nothing in the Agreement will:

- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
- (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
- (c) limit any liability of a party in any way that is not permitted under applicable law; or
- (d) exclude any liability of a party that may not be excluded under applicable law.

10.2 The limitations and exclusions of liability set out in this Clause 10 and elsewhere in the Agreement:

- (a) are subject to Clause 10.1; and
- (b) govern all liabilities arising under the Agreement or in relation to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except as specified in Clause 10.15.

10.3 Neither party shall be liable to the other party in respect of any loss of profits, income, revenue, turnover, use, production or anticipated savings.

10.4 Neither party shall be liable to the other party for any loss of business, contracts or commercial opportunities.

10.5 Neither party shall be liable to the other party for any loss of or damage to goodwill or reputation.

- 10.6 Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.
- 10.7 Neither party shall be liable to the other party for any losses arising out of a Force Majeure Event.
- 10.8 Subject to Ten Kites' compliance with Clauses 3.10 and 9.3(c), Ten Kites will not be liable to the Customer in respect of any loss or corruption of any data, database or software.
- 10.9 Ten Kites will not be liable to the Customer in respect of any loss or damage arising out of the interruption to a business process due to the temporary unavailability of the Platform or Portal and/or suspension of the Services.
- 10.10 Subject to Ten Kites' compliance with Clause 9.3(c), Ten Kites will not be liable to the Customer for any loss or damage arising out of a computer virus, worm, logic bomb or Trojan horse transmitted to the Customer via the Platform, Portal or Services.
- 10.11 Ten Kites will not be liable to the Customer for any loss or damage arising from a denial of service attack.
- 10.12 Ten Kites will not be liable to the Customer for any loss or damage arising out of any act or omission of any person using a User Account, including any loss or damage arising out of a failure to keep passwords confidential.
- 10.13 Each party's liability to the other party in relation to any event or series of related events will not exceed the greater of:
- (a) GBP 10,000; and
 - (b) the total amount paid and payable by the Customer to Ten Kites under the Agreement during the 12 month period immediately preceding the event or events giving rise to the claim,
- providing that this shall not affect the Customer's obligations to pay the Charges to Ten Kites.
- 10.14 Each party's aggregate liability to the other party under or in relation to the Agreement shall not exceed GBP 100,000.
- 10.15 Clauses 10.8, 10.10 and 10.11 shall not apply with respect to losses of the Customer pursuant to third party claims and regulatory actions arising out of any breach of the Data Protection Laws by Ten Kites; and Clause 10.13 shall not apply with respect to losses of either party pursuant to third party claims and regulatory actions arising out of any breach of the Data Protection Laws by the other party.

11. Data protection

- 11.1 Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.
- 11.2 The Customer warrants to Ten Kites that it has the legal right to disclose all Personal Data that it does in fact disclose to Ten Kites under or in connection with the Agreement.
- 11.3 The Customer shall only supply to Ten Kites, and Ten Kites shall only process, in

each case under or in relation to the Agreement, the Personal Data of persons holding User Accounts, who shall be employees, subcontractors or customers of the Customer, of the following types: names, email addresses, usage data, order data and delivery data; and Ten Kites shall only process the Customer Personal Data for the purposes of providing and monitoring the Services, fulfilling its obligations and exercising its rights under the Agreement, and defending its legal rights.

- 11.4 Ten Kites shall only process the Customer Personal Data during the Term and for not more than 12 months following the end of the Term, subject to the other provisions of this Clause 11.
- 11.5 Ten Kites shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to any place outside the UK and EEA), as set out in these Terms and Conditions or any other document agreed by the parties in writing.
- 11.6 Ten Kites shall promptly inform the Customer if, in the opinion of Ten Kites, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.
- 11.7 Notwithstanding any other provision of these Terms and Conditions, Ten Kites may process the Customer Personal Data if and to the extent that Ten Kites is required to do so by applicable law. In such a case, Ten Kites shall inform the Customer of the legal requirement before processing, unless that law prohibits such information.
- 11.8 Ten Kites shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 11.9 Ten Kites and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data.
- 11.10 Ten Kites must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. In the case of a general written authorisation, Ten Kites shall inform the Customer at least 14 days in advance of any intended changes concerning the addition or replacement of any third party processor by updating the sub-processor list on the Portal, and if the Customer objects to any such changes before their implementation, then the Customer may terminate the Agreement on 7 days' written notice to Ten Kites, providing that such notice must be given within the period of 7 days following the date that Ten Kites informed the Customer of the intended changes. Ten Kites shall ensure that each third party processor is subject to equivalent legal obligations as those imposed on Ten Kites by this Clause 11.
- 11.11 As at the Effective Date, Ten Kites is hereby generally authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data, third parties within the following categories:
 - (a) hosting services providers;
 - (b) email communications services providers (and the Customer agrees that the use of such email communications services providers may result in the transfer of limited elements of Customer Personal Data outside the UK and EEA, providing that Ten Kites shall ensure that such transfers are protected by appropriate safeguards); and

- (c) where a Customer purchases Services or a Portal through Fourth, the relevant Fourth entity
- 11.12 Ten Kites shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.
- 11.13 Ten Kites shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. Ten Kites may charge the Customer at its standard time-based charging rates for any work performed by Ten Kites at the request of the Customer pursuant to this Clause 11.13.
- 11.14 Ten Kites shall make available to the Customer all information necessary to demonstrate the compliance of Ten Kites with its obligations under this Clause 11.
- 11.15 Ten Kites shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.
- 11.16 Ten Kites shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of Ten Kites' processing of Customer Personal Data with the Data Protection Laws and this Clause 11. Ten Kites may charge the Customer at its standard time-based charging rates for any work performed by Ten Kites at the request of the Customer pursuant to this Clause 11.16.
- 11.17 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under these Terms and Conditions, then the parties shall use their best endeavours promptly to agree such variations to these Terms and Conditions as may be necessary to remedy such non-compliance.

12. Confidentiality

- 12.1 The Customer agrees and undertakes:
 - (a) that it will keep all Ten Kites Confidential Information strictly confidential and will not disclose any part of it to any other person without Ten Kites' prior written consent; and
 - (b) that it will use the same degree of care to protect Ten Kites Confidential Information as it uses to protect its own confidential information of a similar nature, being at least a reasonable degree of care.
- 12.2 Ten Kites agrees and undertakes:
 - (a) that it will keep all Customer Confidential Information strictly confidential and will not disclose any part of it to any other person without the Customer's prior written consent; and

- (b) that it will use the same degree of care to protect the Customer Confidential Information as it uses to protect its own confidential information of a similar nature, being at least a reasonable degree of care.
- 12.3 Notwithstanding Clauses 12.1 and 12.2, either party may disclose the Confidential Information of the other party to its officers, employees, professional advisers, insurers, agents and subcontractors who:
 - (a) have a need to have access to the Confidential Information for the performance of their work; and
 - (b) are bound by a written agreement or professional obligation to protect the confidentiality of the Confidential Information.
- 12.4 This Clause 12 imposes no obligations upon a party with respect to Confidential Information of the other party that:
 - (a) is known to the first party before disclosure by the other party, and is not subject to any obligation of confidentiality;
 - (b) is or becomes publicly known through no act or default on the part of the first party; or
 - (c) is obtained by the first party from a third party in circumstances where it has no reason to believe that there has been a breach of a duty of confidence.
- 12.5 The restrictions in this Clause 12 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, or any judicial or governmental request or order, or pursuant to the disclosure requirements relating to the listing of the stock of a party on any recognised stock exchange.

13. Termination

- 13.1 Either party may terminate the Agreement by giving to the other party at least 30 days' written notice of termination, providing that the date of effective termination must at the end of an Agreement Period. Accordingly, if a party gives notice of termination under this Clause 13.1 within the period of 30 days before the end of an Agreement Period, the Agreement will only terminate at the end of the next following Agreement Period.
- 13.2 Either party may terminate the Agreement immediately by giving written notice to the other party if the other party:
 - (a) commits any material breach of any term of the Agreement, and: (i) the breach is not remediable; or (ii) the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or
 - (b) persistently breaches the terms of the Agreement (irrespective of whether such breaches collectively constitute a material breach).
- 13.3 Either party may terminate the Agreement immediately by giving written notice to the other party if:
 - (a) the other party: (i) is dissolved; (ii) ceases to conduct all (or substantially all) of its business; (iii) is or becomes unable to pay its debts as they fall

- due; (iv) is or becomes insolvent or is declared insolvent; or (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
 - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up; or
 - (d) if the other party is an individual, that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.
- 13.4 Ten Kites may terminate the Agreement immediately by giving written notice of termination to the Customer if:
- (a) the Customer fails to pay to Ten Kites any amount due to be paid under the Agreement by the due date; and
 - (b) Ten Kites has given to the Customer at least 30 days' written notice of its intention to terminate on this basis.

14. Effects of termination

- 14.1 Upon termination of the Agreement, all the provisions of the Agreement will cease to have effect, save that the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 3.7, 5.2, 5.6, 7.4 to 7.7, 10, 11, 12, 14 and 17.
- 14.2 Termination of the Agreement will not affect either party's accrued liabilities and rights as at the date of termination.
- 14.3 If the Customer so requests in writing within the period of 30 days following the termination of the Agreement, Ten Kites shall provide to the Customer a single copy of the Customer Data stored on the Platform at or following the date of termination in a format selected by Ten Kites in its sole discretion. The Customer acknowledges that such Customer Data will be provided in its raw form and may not be suitable for any particular purpose. Ten Kites shall only transform the Customer Data into another format upon agreement with the Customer as to the terms of and Charges for such transformation.
- 14.4 At any time following the end of the 30-day period following the date of termination, Ten Kites may delete from Ten Kites' computer systems all Customer Data.
- 14.5 Notwithstanding Clause 14.4 but subject to Clause 11.15, the Customer acknowledges that Ten Kites may retain Customer Data in Ten Kites' systems after the date of termination, whether for technical reasons, legal reasons or otherwise; and the licence set out in Clause 5.2 shall continue after termination to the extent necessary for Ten Kites to exercise Ten Kites' rights under this Clause 14.5.
- 14.6 The Customer will not be entitled to any refund of the Charges upon the termination of the Agreement, nor will the Customer be released from any liability to pay Charges that have accrued before the date of effective termination.

15. Notices

- 15.1 Any notice given under the Agreement must be in writing (whether or not described as "written notice" in the Agreement) and must be delivered personally or by courier, or sent by recorded signed-for post, or sent by email, for the attention of the relevant person, and to the relevant address or email address given below (or as notified by one party to the other in accordance with this Clause).

Ten Kites:

Addressee: Stuart Wilson

Address: Ten Kites Ltd, Markham House, 20 Broad Street, Wokingham, Berkshire, RG40 1AH

Email: stuart@tenkites.com

The Customer:

The person, address and email address set out on the Services Order Form.

- 15.2 If a party receives a notice by email under Clause 15.1, that party must promptly and in any event within 5 Business Days of receipt send an acknowledgement of receipt to the other party.
- 15.3 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
- (a) if the notice is delivered personally or sent by courier, at the time of delivery;
 - (b) if the notice is sent by recorded signed-for post, 48 hours after posting; and
 - (c) if the notice is sent by email, upon the sending of a written acknowledgement of receipt by the recipient.

16. Force Majeure Event

- 16.1 Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under the Agreement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.
- 16.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under the Agreement, will:
- (a) forthwith notify the other; and
 - (b) inform the other of the period for which it is estimated that such failure or delay will continue.
- 16.3 The affected party will take reasonable steps to mitigate the effects of the Force Majeure Event.

17. General

- 17.1 The Agreement shall be governed by and construed in accordance with English law;

and the courts of England shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.

- 17.2 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.
- 17.3 If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
- 17.4 Save as expressly provided otherwise, the Agreement may not be varied except by the express written agreement of both parties.
- 17.5 Each party hereby agrees that the other party may freely assign the entirety of the other party's contractual rights and obligations under the Agreement to any successor to all or a substantial part of the other party's business from time to time. Subject to this, neither party may without the other party's prior written consent assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any contractual rights or obligations under the Agreement.
- 17.6 Subject to the other provisions of the Agreement, the Customer hereby agrees that Ten Kites may subcontract any of Ten Kites' obligations under the Agreement.
- 17.7 The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate or rescind, or agree any amendment, waiver, variation or settlement under or relating to, the Agreement are not subject to the consent of any third party.
- 17.8 Subject to Clause 10.1:
 - (a) the Agreement constitutes the entire agreement between the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter; and
 - (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement.

Schedule 1 Acceptable Use Policy

1. This Policy

This Acceptable Use Policy (the "**Policy**") sets out the rules governing the use of our hosted services (the "**Services**") and any data, content and materials that you may submit using the Services or process using the Services ("**Data**").

By using our Services, you agree to the rules set out in this Policy.

2. General restrictions

You must not use our Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services or any of the areas of the Services.

You must not use our Services:

- (a) in any way that is unlawful, illegal, fraudulent, deceptive or harmful; or
- (b) in connection with any unlawful, illegal, fraudulent, deceptive or harmful purpose or activity.

3. Discriminatory purposes

Without prejudice to the generality of Paragraph 2, you must not use our Services in any way that is unlawfully discriminatory under any applicable law.

4. Unlawful and illegal Data

You must not use our Services to store, host, copy, distribute, display, publish, transmit or send Data that is illegal or unlawful, or that will or may infringe a third party's legal rights, or that could give rise to legal action whether against you or us or a third party (in each case, in any jurisdiction and under any applicable law).

Data must not:

- (a) be libellous or maliciously false;
- (b) be obscene or indecent;
- (c) infringe any copyright, moral rights, database rights, trade mark rights, design rights, rights in passing off or other intellectual property rights;
- (d) infringe any rights of confidence, rights of privacy or rights under data protection legislation;
- (e) constitute negligent advice or contain any negligent statement;
- (f) constitute an incitement to commit a crime;
- (g) be in contempt of any court, or in breach of any court order;
- (h) be in breach of racial or religious hatred legislation or discrimination legislation;
- (i) be blasphemous;

(j) be in breach of official secrets legislation; or

(k) be in breach of any contractual obligation owed to any person.

You must not use the Services to process any Data that is or has ever been the subject of any threatened or actual legal proceedings or other similar complaint.

Schedule 2 Service Statement

This Service Statement sets out the basis upon which Ten Kites will seek to ensure the availability of the Portal and Menu Services and provide the Support Services.

1 Definitions

1.1 In this Service Statement:

"Error" means any material defect in the Portal and/or the Menu Services;

"Extended Support Hours" means 09:00 to 17:30 GMT/BST on any day of the week;

"Hosted Menu Pages" means Menu Pages hosted by Ten Kites;

"Master Agreement" means the agreement between Ten Kites and the Customer for the provision of the Portal as a service, incorporating a signed Services Order Form and the Terms and Conditions;

"Menu API" means the application programming interface hosted by Ten Kites that may be used by Customer software and by Menu Pages to request data from or generated by the Portal;

"Menu Services" means the Menu API and the Hosted Menu Pages; and

"Support Hours" means between 09:00 and 17:30 GMT/BST on a Business Day.

1.2 References to the **"Portal"** in this Service Statement do not include the Menu Services. Subject to this, terms defined in the Master Agreement, and used in this Service Statement, shall have the same meanings in this Service Statement as in the Master Agreement.

2 Availability

2.1 Ten Kites shall:

(a) ensure that the Menu API will be available to the Customer at least 99.9% of the time during each calendar month;

(b) ensure that the Hosted Menu Pages will be available to the Customer at least 99.9% of the time during each calendar month, such availability to be measured across all the Hosted Menu Pages of the Customer collectively; and

(c) use reasonable endeavours to ensure that the Portal will be available to the Customer 24 hours per day, 7 days per week (but Ten Kites does not guarantee this),

subject in each case to Paragraph 2.3.

2.2 Ten Kites shall measure and calculate availability levels using any reasonable methodology.

2.3 For the purposes of Paragraph 2.1, the Portal and Menu Services will not be considered to be unavailable as a result of any period of unavailability arising out

of:

- (a) scheduled maintenance carried out in accordance with Paragraph 3;
- (b) scheduled or emergency maintenance services carried out by any third party;
- (c) a Force Majeure Event; or
- (d) any act or omission of the Customer.

2.4 Ten Kites shall report the availability levels for a calendar month to the Customer promptly following receipt from the Customer of a written request to do so.

2.5 If Ten Kites fails to meet the service availability levels specified in Paragraph 2.1(a) and/or 2.1(b) during a calendar month, then the Customer shall be entitled to claim service credits as follows:

Availability level during calendar month	Service credits as percentage of the periodic Charges payable by the Customer to Ten Kites with respect to the Portal during the calendar month
Greater than 99.9%	No service credits
Greater than 99.8% but less than or equal to 99.9%	5% of applicable Charges
Greater than 99.5% but less than or equal to 99.8%	10% of applicable Charges
Less than or equal to 99.5 %	15% of applicable Charges

2.6 If Ten Kites fails to meet both the service availability level specified in Paragraph 2.1(a) and the service availability level specified 2.1(b) during a calendar month, then the Customer will not be entitled to service credits from both failures, but only to those service credits from one of the failures: whichever results in the largest service credits award.

2.7 The Customer must claim service credits by sending a written notice of claim to Ten Kites within the period of 30 days following the end of the calendar month during which the right to the service credits was earned.

2.8 The service credits awarded to the Customer shall be deducted from the next periodic Charges payable by the Customer to Ten Kites with respect to the Portal as specified in the Services Order Form.

2.9 If the Customer fails to claim service credits in accordance with Paragraph 2.7 and in any case upon the termination of the Agreement, the service credits will be lost, and the Customer will have no right to any compensation in respect of any such lost service credits.

2.10 Except in the case of a material breach of the Agreement, all of the Customer's rights in relation to any breach of the service availability levels set out in this Paragraph 2 are as specified herein.

3 Maintenance

3.1 For the purpose of undertaking scheduled maintenance, Ten Kites may:

- (a) suspend access to the Portal, providing that Ten Kites shall use reasonable endeavours to ensure that any such suspension is outside Support Hours; and
- (b) suspend access to the Menu Services for up to 1 hour during each calendar month, providing that any such suspension is between the hours of 05:00 and 08:00 GMT/BST.

3.2 The Customer acknowledges that Ten Kites may apply upgrades/updates to the Portal and that such updates/upgrades may result in changes to the appearance or functionality of the Portal.

3.3 Ten Kites shall periodically publish a release schedule for the development of the Portal, but Ten Kites shall not be bound by any published release schedule.

3.4 Ten Kites shall give to the Customer reasonable prior written notice of any significant changes that affect the existing functionality of the Portal or Menu Services and may impact the Customer's use of the Portal or Menu Services.

3.5 Ten Kites is under no obligation to delay or cancel any scheduled maintenance or updates/upgrades in the event of any objection notified by the Customer.

4 Errors

4.1 The Customer shall promptly notify Ten Kites of any Error of which the Customer becomes aware.

4.2 Ten Kites shall use reasonable endeavours to correct any reported Error as soon as practicable within the relevant target resolution time set out in this Service Statement. The Customer acknowledges that Ten Kites cannot and does not guarantee or warrant that it will correct any Error within any specific timescale or at all.

4.3 Ten Kites will work with the Customer to determine, in Ten Kites' reasonable opinion, whether a reported issue is related to the Portal, a Menu Page, the Menu API or third party services, software and/or hardware. If Ten Kites determines that an issue is due to third party services, software and/or hardware outside its control, it will have no obligation to assist in the resolution of the issue. If Ten Kites determines that an issue is an interface conflict with third party services, software and/or hardware, Ten Kites may, at its sole discretion, agree to work with the third party to resolve the issue, such work to be charged at Ten Kites' prevailing rates.

4.4 Reported Errors shall be classified by Ten Kites as follows:

Definition	Portal examples	Menu Services examples
Critical: This is a severe	A major server outage;	No data is available

problem, no workaround is available, and immediate attention is needed.	no users are able to log into Portal; core Portal features are not functioning resulting in the Portal becoming unusable.	through the Menu API; a Hosted Menu Page is unavailable; allergy information published to the Menu API or Hosted Menu Pages is incorrect.
Serious: This is a serious problem. No workaround is available.	Core Portal features are not functioning correctly resulting in a serious disruption to users' ability to use the Portal, where a short-term workaround is not available.	Severe performance issues for both the Menu API and Hosted Menu Pages; significant formatting issues on Hosted Menu Pages.
Moderate: This is a moderate problem. A workaround may or may not be available.	Portal features are not functioning correctly resulting in moderate disruption to users' ability to use the Portal, where a short-term workaround is not available.	Moderate performance issues for both the Menu API and Hosted Menu Pages; moderate formatting issues on Hosted Menu Pages.
Minor: This is a minor problem. Users will still be able to perform work.	Portal features are not functioning correctly resulting in minor inconvenience to users' ability to use the Portal.	Minor performance issues for both the Menu API and Hosted Menu Pages; minor formatting issues on Hosted Menu Pages.

4.5 Target response times and target resolution times for Errors in the Portal will be as follows:

Error	Target Response Time		Target Resolution Time	
	Portal	Menu Services	Portal	Menu Services
Critical	2 Support Hours	1 Extended Support Hours	1 Business Day	8 Extended Support Hours
Serious	4 Support Hours	4 Extended Support Hours	2 Business Days	16 Extended Support Hours
Moderate	1 Business Day	4 Extended Support Hours	4 Business Days	3 Business Days
Minor	2 Business Days	1 Business Day	Resolution will be within a period proportionate to the problem in	Resolution will be within a period proportionate to the problem in

			question.	question.
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4.5 Ten Kites will not be obliged to carry out any work in relation to the Portal outside the Support Hours, or in relation to the Menu Services outside the Extended Support Hours; but if Ten Kites does so at the Customer's request it will be entitled to charge the Customer at its prevailing rates.

5 Support Services

5.1 Ten Kites shall provide the Support Services to Support Contacts as follows:

- (a) Support Services in relation to the Portal (including difficulties and queries in understanding and making use of the Portal) shall be provided during Support Hours online, by email and/or by telephone;
- (b) Support Services in relation to Errors in the Menu Services shall be provided during Extended Support Hours online, by email and/or by telephone and, in the case of critical Errors affecting the Menu Services, outside Extended Support Hours by telephone.

5.2 Ten Kites shall have the right to suspend the Support Services in relation to the Portal if, in the opinion of Ten Kites, Support Contacts have not been adequately trained (whether by Ten Kites or otherwise) in the use of the Portal.

5.3 If Ten Kites' staff cannot answer telephone support calls (upon which no guarantee is given), Support Contacts are requested to send an email to support@tenkites.com.

5.4 In addition to the handling of Errors in the Portal and Menu Services, the Support Services cover normal day-to-day use of the functionality of the Portal, but the Support Services do not cover tasks that must be performed by Ten Kites on a database of the Customer to resolve a problem, recover or correct data. Such tasks will be agreed with the Customer and charged at Ten Kites' prevailing rates.

5.5 The Customer recognises that resolution of issues can be limited by the information provided by a Support Contact and the wide range of possible environments in which the Portal and Menu Pages are used. Ten Kites cannot guarantee that it will resolve any given problem, only that Ten Kites will review it and provide any information or suggestions it believes will be useful to the Support Contact. The final determination of whether a problem should be resolved by providing information about how to use the Portal to meet a Support Contact's needs, by modifying the Portal or Menu Pages to address a problem, by suggesting a workaround, or by some other method, is solely up to Ten Kites.

5.6 Ten Kites reserves the right to close a Support Service issue at its discretion if in Ten Kites' judgment, it cannot provide any additional useful information despite all reasonable attempts.

5.7 In order to understand a question or problem, it may be necessary to request additional information from the Customer and/or Support Contact. If this information is not provided responsively and in a timely fashion, Ten Kites may not be able to assist with the question or problem any further. Ten Kites may also ask the Customer and/or Support Contact to perform tests or other experiments.

5.8 The Support Services shall be provided remotely.

- 5.9 Ten Kites shall have no obligation to provide Support Services in respect of any issue caused by:
- (a) the improper use of the Portal, Menu Pages or Menu Services by the Customer; or
 - (b) the use of the Portal or Menu Pages via any non-supported web browser.
- 5.10 The maximum number of Support Contacts in any period shall be the number specified in the Services Order Form. The Customer acknowledges that increases in the number of Support Contacts agreed by the parties from time to time may be subject to the payment of additional Charges.