

## **GURU Terms & Conditions**

### **ABOUT THESE TERMS:**

- A. These subscription terms and conditions (“**these Terms**”) govern your access to and use of the *GURU* Service as provided from time to time (“**the Service**”). *GURU* is a trading name of UKDedicated Ltd, a company incorporated and registered in England and Wales with company number 4625539 and with its Registered Office at 3 Centro, Boundary Way, Hemel Hempstead, Hertfordshire HP2 7SU, and any reference to *GURU* in these Terms or an Order shall be construed accordingly.
- B. In order to access and use the Service, you the Customer must signify your agreement to these Terms by placing an order through the *GURU* website and/or *GURU* customer portal website. By doing so, you also confirm that you are authorised to contract with *GURU* subject to these Terms.
- C. If you do not accept these Terms, or are not authorised to enter into an agreement with *GURU* based on these Terms, you must exit the ordering process. You will not then be entitled to access or use the Service.

### **1. INTERPRETATION**

1.1. In this Agreement the following words and phrases have the following meanings

“**Acceptable Use Policy**” or “**AUP**” means *GURU*'s acceptable use policy governing the Customer's use of any Services, as notified to the Customer and as amended by *GURU* from time to time;

“**Agreement**” means a contract between *GURU* and the Customer comprising an Order and these Terms;

“**Charges**” means the charges and fees specified in the Order payable by the Customer to *GURU* in respect of the Services;

“**Confidential Information**” means in respect of either party any and all information relating to the trade secrets, operations, processes, plans, intentions, products, product information, prices, know-how, designs, customer lists, market opportunities, transactions, affairs and/or business of that party and/or to its customers, suppliers, clients or affiliated companies in or on any medium or format;

“**Contact Point**” means in respect of either party the person so designated in the Order and/or their replacements from time to time;

“**Customer**” means the person specified as such in the Order;

“**Data Protection Laws**” means those laws further defined in the Data Protection Policy;

“**Data Protection Policy**” means UKDedicated's data protection policy governing the storage, processing and transfer of the personal data (if any) stored on UKDedicated's servers by the

Customer, located in the GURU Customer portal and as amended by UKDedicated upon written notice to the Customer from time to time;

**“Due Date”** means the date shown as the Due Date of the relevant invoice;

**“Intellectual Property Rights”** means patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (and rights to apply) for, and renewals or extensions of, 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;

**“Measureable Resource”** means the resources, materials or services, specified in the Order, to be provided to the Customer as part of the Service, including:

- (a) CPU time, memory, storage, backups, and bandwidth;
- (b) any licensed software; and
- (c) IP addresses, management, support, backups, and templates.

**“Order”** means an order placed by the Customer by means of the online order process set out on the GURU website or GURU customer portal website, which, when completed and submitted by the Customer in accordance with that process, and confirmed by GURU in accordance with clause, creates a binding agreement between the Customer and GURU, incorporating these terms and conditions;

**“Services”** means the GURU services detailed in the Order;

**“Service Commencement Date”** means the date specified as such in the Order;

**“Service Level Obligations”** means any obligations set out in this Agreement in respect of service levels for the Services;

**“Sourcing Issue”** means an inability of GURU to source particular materials/resources (including personnel) on terms similar or identical to those available at the Service Commencement Date (including exchange rate fluctuations/increases in taxes/duties);

**“Working Day”** means any day from Monday to Friday inclusive which is not Christmas Day, Boxing Day, New Year’s Day, Good Friday or other public holiday in England.

- 1.2. Unless the context otherwise requires, references to GURU and/or the Customer include their permitted successors and assigns.
- 1.3. The headings contained in this Agreement are for convenience of reference only and shall not affect its interpretation or construction.
- 1.4. Unless the context otherwise requires words denoting the singular shall include the plural and vice versa, references to any gender shall include all other genders and references to persons shall include natural persons, bodies corporate,

unincorporated associations, governments, states, trusts and partnerships, in each case whether or not having a separate legal personality.

- 1.5. The words and phrases “including” and “in particular” shall be without limitation to the generality of any preceding words and any preceding words shall not be construed as being limited to a particular class where a wider interpretation of those words and phrases is possible.
- 1.6. Any reference to “writing” or “written” includes faxes and emails but does not include texts or other forms of instant messaging.
- 1.7. References to any statute, enactment, order, regulation or other similar instrument shall be construed as references to the same as amended by or as contained in any subsequent re-enactment, modification or statutory extension thereof.
- 1.8. In the event of conflict or ambiguity between the Terms and the Data Protection Policy, the Data Protection Policy shall prevail.

## 2. THE SERVICES

- 2.1. Notwithstanding the submission of an Order and payment of the Charges by the Customer, GURU reserves the right at its absolute discretion to decline to provide the Services to the Customer, in which event any Charges paid will be refunded to the Customer. No binding agreement shall subsist between GURU and the Customer unless and until a formal subscription confirmation is issued to the Customer by GURU.
- 2.2. Subject to clause 2.1, GURU will in consideration of the Customer’s payment of the Charges provide the Services with effect from the Service Commencement Date, until the Services are terminated in accordance with these Terms.
- 2.3. GURU will use all reasonable endeavours to make available the Measureable Resource required by the Customer from time to time, but GURU reserves at all times the right to manage available resource and capacity across its customer base at large, and to decline to provide all or any part of any Measureable Resource requested by the Customer.
- 2.4. The Customer agrees and acknowledges that:
  - 2.4.1. all hardware (including any dedicated server provided as part of the Services (“**Hardware**”) will remain the sole property of GURU;
  - 2.4.2. all licensed software provided or used as part of the Services (“**Software**”) will remain the sole property of GURU or its licensor, and is not transferrable; and
  - 2.4.3. neither the Customer nor its servants, agents or contractors will be permitted physical access to the hosting facility or to any GURU equipment or infrastructure.
  - 2.4.4. any Software will be provided in default configuration only, unless otherwise stated in the Order. Where the Customer requires GURU to configure any Software “from default”, the provision of such services may be subject to additional Charges.
- 2.5. The Customer acknowledges that in order to take appropriate action in respect of any fault or other problem affecting any of the Services, GURU will require administrator/root access. The Customer will ensure that GURU is provided with the necessary credentials to effect such access.

- 2.6. The Customer acknowledges that in some circumstances the diagnosis of Service problems may involve activity which causes further interruption to the provision of Services to the Customer, and hereby authorises GURU to perform such diagnosis as and when necessary as part of the Services.
- 2.7. Without exception, only GURU will be entitled to undertake diagnosis of faults in or failures of elements of the Services or infrastructure under GURU's control. Depending on the circumstances, the restoration of Service may at GURU's discretion be on a permanent or temporary basis. The Customer must notify GURU of any activity (such as planned maintenance) which may affect GURU's provision of any Services. Where any remedial or other action by GURU becomes necessary due to any failure by the Customer to provide any such notification, GURU shall be entitled to charge the Customer for any such action taken.
- 2.8. Where GURU notifies the Customer of any action by the Customer necessary in order to maintain the provision of any Service, GURU will not be liable for any degradation of or interruption to that Service until such time as that action has been taken.
- 2.9. GURU
- 2.9.1. will provide technical support for the infrastructure utilised by it in the provision of the Services, but will not provide support for application-specific issues or for the purposes of software development;
- 2.9.2. will not be under any obligation to correct any fault caused by any act or omission of the Customer or its employees sub-contractors or agents;
- 2.9.3. will have no responsibility or liability for any degradation of performance or security attributable to the alteration by the Customer of any default setting applied to any aspect of the Services.
- 2.10. Where the Services include the provision of a data backup service, GURU will use reasonable endeavours to perform backups of data stored upon each relevant Server and to make those backups available to the Customer in accordance with the applicable backup service specification, but GURU cannot and does not warrant that data will be backed up correctly or restored successfully, or that this will be performed to any particular timescale. GURU also does not warrant that all customer data will be backed up, and may exclude certain categories of customer data from the backup process without notice at its discretion.
- 2.11. Where the Services include the allocation of any IP Address, any such allocation will be effected in accordance with RIPE guidelines. The Customer will provide reasonable justification for the usage of any IP address which the Customer seeks to have allocated to it. All IP addresses remain under the control and ownership of GURU which may change or remove IP addresses from time to time at its discretion.
- 2.12. GURU may as part of the Services provide the Customer with access to software owned / licensed by third parties, such as (but not limited to) cPanel, R1Soft CDP or Microsoft products ("Third Party Software"). The Customer acknowledges that
- 2.12.1. Third Party Software is supported by the relevant third party owner/licensor, and unless expressly agreed with the Customer in writing GURU can offer no guarantee as to the availability, operability or performance of Third Party Software, nor can GURU accept any responsibility for any problems resulting from the operation of such Third Party Software; and

- 2.12.2. the Customer's use of such software will be subject to the terms and conditions of the relevant licence(s), with which the Customer will comply.
- 2.13. GURU, its suppliers or service providers may from time to time need to carry out repairs or maintenance which can affect the provision of Services to the Customer. Where possible, GURU will provide at least seven (7) days notice of any repair or maintenance works. The Customer acknowledges however that repairs or maintenance may have to be carried out as an emergency in order to protect Services or to avert more severe or prolonged interruption of those or other Services, in which case GURU will provide the Customer with as much notice as is reasonably practicable in the circumstances. Repair or Maintenance works, whether scheduled or due to emergency, shall be disregarded when measuring GURU's compliance with any applicable performance measurements or targets.
- 2.14. The Customer acknowledges that, having regard to the nature of computer technology and the electronic components common to computer equipment, certain actions performed as part of repair or maintenance may bring to light failure conditions which otherwise may not have been evident until a later time, and that GURU will have no liability for any such operating failures connected to but not directly caused by, repair maintenance or service outages.
- 2.15. Each party shall designate a Contact Point to act as that party's prime point of contact with the other party in connection with this Agreement.
- 2.16. GURU will endeavour to implement software updates relevant to the Services within a reasonable period of their becoming available, provided GURU has been afforded access necessary to do so. The Customer acknowledges that:
- 2.16.1. certain updates may be performed automatically and without prior notification to the Customer; and
- 2.16.2. some interruption to the Customer's Services may be unavoidable given the scope or complexity of any given update.
- 2.17. Where GURU performs migration of Services from another provider to GURU:
- 2.17.1. Migration shall be performed on a best-effort basis.
- 2.17.2. Third-party software, tools or services may be used to migrate customer data. This may involve data traversing or being stored on third-party networks and systems which are not under the control of GURU/UKDedicated. Security and integrity of data is not assured by GURU/UKDedicated.
- 2.17.3. GURU is not responsible for verification of integrity of data transferred during service migration, or any data loss which may occur as a result of migration.
- 2.17.4. It remains always the responsibility of the Customer to verify migrated data and configurations are correct.
- 2.18. GURU shall have the right to make any changes to the Services:
- 2.18.1. immediately on notice to the Customer, where such changes:
- 2.18.1.1. are necessary to comply with any applicable law or safety requirement;
- 2.18.1.2. result from a Sourcing Issue; or
- 2.18.1.3. do not materially negatively affect the nature or quality of the Services; and

- 2.18.2. on thirty (30) days' notice to the Customer in any other circumstances (“**Variation Notice Period**”).

### 3. **DOMAIN NAMES & SSL CERTIFICATES**

- 3.1. GURU does not warrant or represent that any domain name the Customer wishes to register is capable of being registered by or for the Customer or that it will be registered in the Customer's name. The Customer acknowledges that:
- 3.1.1. it should not assume registration of any domain name, nor the renewal of any registration, until formally notified of the same; and
  - 3.1.2. any action taken by the Customer before receipt of such notification is entirely at the Customer's own risk.
  - 3.1.3. All domains are ultimately the responsibility of the customer. New Domain Registrations and Domain Name renewals should not be considered completed unless confirmed via eMail. All renewal and expiry dates are publicly available in the whois database, customers should ensure their familiarity with this and arrange any renewals accordingly. GURU will under no circumstances have any responsibility or liability for or arising from the expiry of a domain and/or for any resulting effect on the Customer's business
- 3.2. The Customer's registration and use of any domain name is subject to the terms and conditions of use applied by the relevant naming authority, and the Customer shall ensure that it is aware of those terms and conditions and that it complies with them. GURU will have no liability to the Customer for any refusal to register a domain name. Any administration charge paid by the Customer to GURU shall be non-refundable, notwithstanding any refusal by the naming authority to register the Customer's desired name.
- 3.3. GURU will have no liability in respect of the Customer's use of any domain name. Any dispute between the Customer and a third party will be resolved between the Customer and that third party. If any such dispute arises, GURU shall be entitled, at its discretion and without giving any reason, to withhold, suspend or cancel the domain name. GURU will also be entitled to make representations to the relevant naming authority, but will be under no obligation to intervene in or take any part in any such dispute.
- 3.4. GURU will have no obligation to release any domain name to another provider unless it has received payment in full for that domain name, including where a domain name is provided as part of a free or reduced price offer.
- 3.5. The Customer will be responsible for:
- 3.5.1. domain name renewals, and for ensuring that renewal applications are made in good time before the relevant expiry date;
  - 3.5.2. domain name transfers, and for ensuring the timely submission and completion of transfer requests and any necessary liaison with registrars or other relevant third parties.

GURU will under no circumstances have any responsibility or liability to the Customer for or arising from the expiry of a domain and/or for any resulting effect

on the Customer's business.

- 3.6. In accordance with the terms and conditions of domain name purchases, GURU is obliged to publish the owner's full contact details in the public whois database. GURU will under no circumstances have any liability to the Customer for or arising from such publication, or for any resulting effect on the Customer's business. The Customer understands and agrees that the disclosure of their contact details is necessary in order for GURU to register the domain, and that such disclosure does not thereby constitute a violation of the Data Protection Policy.
- 3.7. All SSL Certificates are ultimately the responsibility of the Customer. All renewal and expiry dates are publicly available and the Customers acknowledges that it should arrange any renewals accordingly. GURU will under no circumstances have any responsibility or liability to the Customer for or arising from the expiry of a SSL Certificate or for any resulting effect on the Customer's business.

#### 4. SERVICE PROVISION AND MEASUREMENT

- 4.1. If the Order specifies that a Service will be managed by GURU, GURU will:
- 4.1.1. monitor the following services ("**Customer's Services**") for faults at approximately 5 minute intervals:
- (a) HTTP;
  - (b) FTP;
  - (c) POP3;
  - (d) IMAP;
  - (e) ICMP PING;
  - (f) SMTP;
  - (g) MYSQL (Port open connection only); and
  - (h) SSH,
- provided that where any of the Customer's Services are operational, the Customer will allow access to them by GURU's monitoring platform;
- 4.1.2. where a fault enters a 'hard' problem state, take remedial action to correct the problem;
- 4.1.3. where ordered, provide cPanel software in a default but optimally-configured state, or such other state as may be specified in the Order;
- 4.1.4. in the event of complete system failure, restore backups from GURU snapshot backups or (where specified to be part of the Services) GURU's CDP product only;
- 4.1.5. install software designed to monitor and block malicious connections, but the Customer acknowledges that such software cannot not provide complete and total security and that responsibility for the security of the Customer's data, applications and platform remains solely with the Customer;

- 4.1.6. run software on the Customer's service to perform automated housekeeping tasks, and the Customer agrees not to interfere with such software or its configuration;
- 4.1.7. where specified to be part of the Services, schedule hourly CDP backups at a time chosen by GURU, such backups being retained by GURU for 24 hours;
- 4.1.8. provide initial and ongoing configuration of cPanel software (including cPanel-based Apache/LiteSpeed and PHP reconfiguration) when requested by the Customer.
- 4.2. For the purpose of measuring GURU's provision of any Services:
  - 4.2.1. network availability will be measured by means of monitoring on the internet undertaken by GURU from remote locations using industry-standard tools; and
  - 4.2.2. all other Services availability will be measured by monitoring of the relevant Services undertaken by GURU using its management platform.
- 4.3. If the Order specifies that a Service will not be managed by GURU, that Service will not include the provision of support, and GURU will be entitled to charge for any support it agrees to provide in respect of any such Service at GURU's then-current standard hourly rate.
- 4.4. GURU will use all reasonable endeavours to make the Services available to the Customer in accordance with the following service levels, availability being measured on a 24 hours a day, 7 days a week basis for each calendar month:
  - 4.4.1. HTTP/HTTPS service:
    - (a) GURU Shared Hosting – 100% availability;
    - (b) GURU Dedicated Hosting – 100% availability; and
    - (c) GURU Reseller Hosting - 99.99% availability;
  - 4.4.2. All other services:
    - (a) GURU Shared Hosting, GURU Dedicated Hosting, GURU Reseller Hosting, GURU Shared Hosting Email Addon – 99.9% availability.
- 4.5. In the event that GURU fails to meet any Service Level Obligations, GURU will (subject to clauses 4.6 and 4.7) consider claims for compensation for such failure not exceeding the Charges accrued for the Service to which that failure relates in the calendar month in which the failure occurred (the “**Relevant Month**”), provided that:
  - 4.5.1. only one claim may be made for any one incident;
  - 4.5.2. claims for multiple incidents in the same month shall not collectively exceed the Charges for the Services in that the Relevant Month; and
  - 4.5.3. any compensation paid in respect of a claim (or claims for multiple incidents) shall be in full and final settlement of all rights of the Customer in respect of such claim and/or claims;
  - 4.5.4. the customer service is not over-subscribed, subject to or participating in any form of malicious activity or denial of service event, or operating otherwise than in accordance with the GURU Acceptable Use Policy.
- 4.6. All claims under clause 4.5 must be received in writing within seven (7) calendar days of the failure to which the claim relates.
- 4.7. All claims under clause 3.5 will be subject to the following:



- 4.7.1. refund of 1 day's Service Charges for every 30 minutes or part thereof from the time when GURU fails to meet any Service Level Obligation until the time that failure is resolved based upon the resource utilisation of the relevant virtual machine at the time of the failure, not exceeding the aggregate Charges of the Service to which that failure relates in the month the event occurs (subject to the limit on compensation set out in clause 3.5);
  - 4.7.2. in the event of multiple failures relating to the same incident, only one claim may be submitted to cover the incident;
  - 4.7.3. multiple simultaneous failures or failures related to or arising from the same incident will constitute only one failure; and
  - 4.7.4. without prejudice to the generality of clause 3.6.3:
    - (a) in the event that both network and other services are simultaneously unavailable, this will constitute only a single failure of the relevant Service(s); and/or
    - (b) in the event of a connected failure of a dependant service component, this will constitute only a single failure of the relevant Service(s).
- 4.8. All Service Level Obligations are subject to the terms of this Agreement.

## 5. CUSTOMER RESPONSIBILITIES

- 5.1. Irrespective of any agreement with GURU for the provision of data backup Services, the Customer will at all times have sole responsibility for the safekeeping of its data and will at all times keep sufficient and current backups of that data. GURU will have no liability for any loss of or damage to any data stored on the Services or which is the subject of any backup Services.
- 5.2. The Customer is solely responsible for the licensing and operation of any software which is utilised as part of any Services, but not licensed by GURU. The Customer will at all material times ensure that it has all licences or other authority necessary to operate such software. The Customer shall on request produce any evidence reasonably required by GURU to verify that the Customer is entitled to use any particular software as part of any Services.
- 5.3. The Customer agrees that it shall at all times:
  - 5.3.1. be responsible for the adoption and maintenance of such measures as may reasonably be required in order to prevent unauthorised access to the Services by any means under the control of the Customer; and
  - 5.3.2. comply with the licensing terms of any licence applicable to any software provided by GURU as part of the Services.
- 5.4. The Customer will not access or use or attempt to access or use the Services:
  - 5.4.1. in any way which interferes with, damages or disrupts, or might reasonably be expected to interfere with, damage or disrupt the Services, or any equipment, software, website or network owned or operated by GURU;
  - 5.4.2. in any way which is unlawful, illegal or fraudulent, or has any unlawful, illegal or fraudulent purpose or effect;

- 5.4.3. to transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation;
- 5.4.4. knowingly to store, transmit or upload any data or material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware.
- 5.4.5. knowingly to store, transmit or upload any data or material which:
  - (a) advocates, promotes or assists violence, any other illegal or unlawful activity;
  - (b) is obscene, offensive, hateful, defamatory or inflammatory;
  - (c) is threatening, abusive or which invades another's privacy, or causes needless anxiety or annoyance;
  - (d) advocates or promotes discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;
  - (e) infringes any copyright, database right, trade mark or other proprietary right of any other person;
  - (f) is fraudulent or misleading;
  - (g) is made in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence.

## **6. CHARGES AND PAYMENT**

- 6.1. The Charges will be calculated by reference to the Customer's usage of Services, as specified in the Order, and any applicable software licence fees, and will be invoiced monthly in advance.
- 6.2. GURU will invoice the Customer for the Charges in advance of the calendar month during which the relevant Services are provided. Charges will be charged directly to a registered credit/debit card. GURU's invoices shall be payable by the Customer no later than the Due Date. The Customer acknowledges that GURU and/or its payment partners may seek payment of any Charges due in accordance with the Order without further or prior notification.
- 6.3. All payments of Charges made are non-refundable.
- 6.4. If any Charges remain unpaid seven (7) days after the Due Date, GURU shall without prejudice to its rights under clause 9 be entitled to charge interest on any unpaid amount on a daily basis (before as well as after any judgment) from the Due Date to the date of payment at the rate of four (4) per cent above the base rate of Barclays Bank plc from time to time in force. Such interest shall accrue on a daily basis and be compounded quarterly. GURU reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.5. The Customer shall at all times comply with the Acceptable Use Policy.
- 6.6. In the event of any dispute in relation to the Charges, the Customer shall notify GURU in writing within seven (7) days of receipt of the invoice, and shall provide details of

the amount in dispute and the basis on which payment is disputed. The Customer shall pay any undisputed sum by the Due Date, and the parties shall as soon as reasonably practicable refer the dispute for resolution in accordance with the procedure set out in clause 17. Any disputed Charges which are subsequently determined to be due and payable by the Customer to GURU shall attract interest in accordance with clause 6.4 as from their original Due Date.

- 6.7. Where payment of any Charges has not been made by the Customer by any relevant Due Date, GURU reserves without prejudice to its rights under clause 6.4 or clause 9 the right to require advance payment of future Charges and/or the provision of acceptable personal guarantees before any further provision of Services.
- 6.8. Where any purported payment of Charges by the Customer is rejected or reversed GURU will in respect of every such failure be entitled to charge the Customer a fee in the sum of fifty (50) pounds in respect of its administrative costs.
- 6.9. GURU will be entitled to recover from the Customer its reasonable legal and administrative costs and expenses actually incurred in enforcing payment of unpaid Charges which remain unpaid as at their relevant Due Date.
- 6.10. The Charges are exclusive of VAT and any other similar taxes, duties or levies or other deductions or withholdings in countries outside the United Kingdom, which shall be payable at the rate and in the manner prescribed by applicable law.
- 6.11. Where 'money back' guarantees are offered, GURU retains the absolute right to determine validity of any claims.
- 6.12. All claims must be received by GURU within 14 days of the original payment date.

## **7. WARRANTIES**

- 7.1. Each party warrants that it has full capacity and authority, all necessary licences, permits and consents, has taken all necessary actions to enable it lawfully to enter into this Agreement, and that those signing this Agreement are duly authorised to bind the party for whom they sign.
- 7.2. GURU warrants that the Services shall be carried out using reasonable care and skill in accordance with good industry practice.
- 7.3. All other representations or warranties (whether written or oral, express or implied by statute, common law or otherwise howsoever) than those expressly set out in this Agreement are hereby excluded. In particular, but without prejudice to the generality of the foregoing, GURU makes no representation or gives any warranty (whether express or implied, statutory or otherwise), and will have no liability, regarding the fitness of the Services for any purpose, whether or not such purpose is disclosed to GURU.

## **8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1. The Customer acknowledges and agrees that GURU and/or its licensors own all intellectual property rights in the Services. Except as expressly stated herein, this Agreement does not grant the Customer any Intellectual Property Rights or any other rights or licences to, in or in respect of the Services or any related documentation or

software. All rights not expressly granted to the Customer under these Terms are reserved by GURU or its licensors.

- 8.2. GURU acknowledges and agrees that the Customer and/or its licensors own all Intellectual Property Rights in any data, software or other materials provided by the Customer to GURU in connection with the provision of the Services (“**Customer Materials**”). Except as expressly stated herein, this Agreement does not grant GURU any Intellectual Property Rights or any other rights or licences to, in or in respect of any Customer materials.
- 8.3. Nothing in this Agreement shall be construed so as to prevent GURU from using in the furtherance of its own business general know-how or expertise gained in its performance of this Agreement, provided that any such use does not constitute or result in a disclosure of any Confidential Information in breach of clause 9 or infringement of any Intellectual Property Right.

## 9. TERMINATION & SUSPENSION

- 9.1. Either party may terminate this Agreement at any time on written notice to the other if that other:
  - 9.1.1. is in material breach of any of the terms of this Agreement or commits a series of persistent minor breaches which, when taken together, amount to a material breach, and either that breach is incapable of remedy, or the other party fails to remedy that breach within thirty (30) days after receiving written notice requiring it to remedy that breach; or
  - 9.1.2. upon the other party passing a resolution for winding-up or having a petition to wind up presented against it or going into liquidation, whether voluntary or compulsory (save for the purposes of amalgamation or reconstruction where the amalgamated or reconstructed company agrees to adhere to this Agreement) or suffering a winding-up order being made against it or going into administration; or
  - 9.1.3. if the other party proposes a voluntary arrangement within the meaning of Section 1 or Section 253 of the Insolvency Act 1986, or an interim order is made in relation to the Supplier under Section 252 of the Insolvency Act 1986, or any other steps are taken or negotiations commenced by that party or any of its creditors with a view to proposing any kind of composition, compromise or arrangement involving the other party and any of its creditors;
  - 9.1.4. if a receiver or administrative receiver or administrator is appointed or an encumbrancer takes possession of the undertaking or assets (or any part thereof) of the other party; or
  - 9.1.5. if the other party is unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986 or any statutory re-enactment or modification thereof) or ceases to or threatens to cease to carry on its business or enters into a composition with its creditors; or
  - 9.1.6. if the other party suffers an event in a country or jurisdiction other than the United Kingdom which has a similar effect to the events described in clauses 9.1.2, 9.1.3, 9.1.4 or 9.1.5 in the United Kingdom.

- 9.2. GURU shall be entitled to terminate this Agreement and the provision of the Services if any undisputed Charges remain unpaid fourteen (14) days after the Due Date.
- 9.3. Termination by either party in accordance with the rights contained in this clause 9 shall be without prejudice to any other rights or remedies of that party accrued prior to termination.
- 9.4. The Customer may terminate this Agreement on no less than ten (10) days' written notice to GURU during any Variation Notice Period, as defined in clause 2.18.2 above or clause 16 below, as appropriate.
- 9.5. On termination for any reason:
  - 9.5.1. all rights granted to the Customer under this Agreement shall cease;
  - 9.5.2. the Customer shall cease all activities authorised by this Agreement;
  - 9.5.3. all data will be removed from the relevant server(s); and
  - 9.5.4. the Customer shall immediately pay any sums due to GURU under this Agreement.
- 9.6. Without prejudice to any right to terminate which GURU might have, GURU will be entitled to suspend any Services without notice if:
  - 9.6.1. any undisputed Charges remain unpaid seven (7) days after the Due Date or the Customer is otherwise in material or persistent breach of this Agreement; or
  - 9.6.2. the Customer does or allows to be done anything which jeopardises the Services or any network to which the Customer is connected from time to time.
- 9.7. Suspension shall not affect the liability of the Customer to pay Charges or any other sums or payments payable to GURU in respect of any suspended Services, which shall remain chargeable throughout the period of any suspension. GURU shall not be liable for any losses or inconvenience caused to the Customer or any third party by the suspension or cancellation of any Services.
- 9.8. GURU shall during the period of any suspension be entitled to refuse to release any IP Address of the Customer allocated by GURU.
- 9.9. On suspension of any Services by GURU in accordance with clause 9.6, GURU reserves the right to charge the Customer a fee for the reinstatement of those Services, in a sum appropriate to the nature and scope of the Services concerned.

## 10. CONFIDENTIALITY

- 10.1. The provisions of this clause 10 shall remain in full force and effect notwithstanding termination of this Agreement for any reason.
- 10.2. Each party shall treat in confidence the other's Confidential Information, and shall not disclose any of the other's Confidential Information to any other person other than its own employees under conditions of confidentiality and then only to the extent required for proper performance of its obligations under this Agreement.
- 10.3. Nothing in this Agreement shall be construed to impose a confidentiality obligation on a party in respect of:
  - 10.3.1. any matter appearing in public literature or otherwise within the public domain, unless the information is in the public domain as a result of a breach of a contract by that party; or

- 10.3.2. any information or knowledge possessed by that party prior to disclosure to it by the other or rightfully acquired from sources other than the other party; or
  - 10.3.3. any information or knowledge acquired in a bona fide arm's length transaction by the party making the disclosure; or
  - 10.3.4. information which is required by law or a court of competent jurisdiction to be publicly released.
- 10.4. In protecting Confidential Information received from the other party, each party shall employ a reasonable standard of care, which shall be no less than the standard of care employed in protecting its own Confidential Information. Both parties will establish and maintain such security measures and procedures as are reasonably practicable to provide for the safe custody of the other party's Confidential Information in its possession and to prevent unauthorised access thereto or use thereof.
- 10.5. Upon any termination of this Agreement, each party shall cause all Confidential Information belonging to the other party in whatever medium the same is recorded or held to be returned, deleted or destroyed according to the written instructions of the other party.

## **11. LIMITATION OF LIABILITY**

- 11.1. This clause 11 prevails over all other clauses in this Agreement.
- 11.2. GURU shall not be liable to the Customer or be deemed to be in breach of its obligations under any provision in this Agreement:
  - 11.2.1. to the extent that any delay in performing or failure to perform GURU's obligations is due to a failure by the Customer to perform its obligations under this Agreement or if delay results from a failure by the Customer to comply with reasonable requests by GURU for instructions, information or action required by it to perform its obligations within a reasonable time limit; or
  - 11.2.2. for the consequences of any acts or omissions of the Customer, its employees or agents or other third party suppliers or manufacturers engaged by or on behalf of the Customer (other than third party sub-contractors or suppliers selected by GURU); or
  - 11.2.3. if the Customer is in default of any of its payment obligations under this Agreement.
- 11.3. GURU does not exclude or limit its liability to the Customer for:
  - 11.3.1. death or personal injury caused by its negligence;
  - 11.3.2. fraudulent misrepresentation;
  - 11.3.3. breach of third party intellectual property rights;
  - 11.3.4. breach of any obligation of confidentiality.
- 11.4. GURU's liability in respect of loss or damage to tangible property of the Customer caused by its negligence shall not exceed £10,000.
- 11.5. Subject to clauses 11.2, 11.3 and 11.4, GURU's liability in respect of loss or damage flowing from any one event or series of connected events shall not exceed the higher of:

11.5.1. a sum equal to the total Charges payable by the Customer under this Agreement during the period of 12 months immediately prior to the event giving rise to the claim, or

11.5.2. the sum of ten thousand (10,000) pounds,

however that liability arises including (without limitation) breach of contract, tort, misrepresentation or breach of statutory duty, provided that GURU shall not be liable to for any loss not flowing directly and naturally in the ordinary course of events from its own act or omission.

11.6. In no event will GURU be liable to the Customer (whether in contract, tort, negligence or otherwise) for:

11.6.1. any direct:

- (a) loss of profit; or
- (b) loss of revenue; or
- (c) loss of use; or
- (d) loss of anticipated savings; or
- (e) loss of goodwill; or
- (f) loss of reputation or opportunity; or
- (g) financial or economic loss; or
- (h) loss of data;

11.6.2. any indirect or consequential loss or damage, costs or expenses whatsoever, and howsoever arising out of or in connection with this agreement; whether such damages were reasonably foreseeable or actually foreseen.

11.7. GURU has no obligation, duty or liability to the Customer in contract, tort, for breach of statutory duty or otherwise beyond that of a duty to exercise reasonable skill and care, and shall have no such liability (other than as provided in the warranties set out in this Agreement) regarding the fitness for purpose, quality or merchantability of any Services, whether express or implied, statutory or otherwise.

## 12. DATA PROTECTION

12.1. If GURU obtains personal data (as defined by Data Protection Law) from the Customer solely in order to provide the Services e.g. the name and contact details of a representative of the Customer, GURU shall be a data controller with respect to such personal data.

12.2. If in the course of providing the Services GURU processes personal data of the Customer as defined by Data Protection Law:

12.2.1. the Customer will be the controller and GURU will be the processor in respect of such personal data;

12.2.2. the parties shall comply with the obligations set out in the Data Protection Policy, which shall be incorporated into this Agreement.

### 13. **FORCE MAJEURE**

- 13.1. Subject to the provisions of this clause 13, neither party will be liable for delay in performing obligations or for failure to perform obligations if the delay or failure resulted from circumstances beyond its reasonable control including but not limited to, act of God or governmental act, war, flood, fire, explosion, accident, civil commotion, or transportation or communications problems, or impossibility of obtaining materials ("Force Majeure"). For the avoidance of doubt, nothing in this clause 13 shall excuse the Customer from any payment obligations under this Agreement.
- 13.2. If the Force Majeure prevails for a continuous period in excess of twenty (20) Working Days, the parties shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing on such alternative arrangements as may be fair and reasonable.
- 13.3. If either party is prevented from performance of its obligations for a continuous period in excess of forty (40) Working Days, the other party may on written notice on the party so prevented terminate this Agreement with immediate effect, in which case neither party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.
- 13.4. The party claiming to be prevented or delayed in the performance of any of its obligations under this Agreement by reason of Force Majeure shall use reasonable endeavours to bring the Force Majeure event to a close or to find a solution by which the contract may be performed despite the continuance of the Force Majeure event.

### 14. **WAIVER**

- 14.1. No failure of either party to insist upon strict performance of any provision of this Agreement, or to exercise any right or remedy to which it is entitled under it, shall constitute a waiver thereof or cause a diminution of the obligations established by this Agreement.
- 14.2. A waiver of any default shall not constitute a waiver of any other default.
- 14.3. No waiver of any of the provisions of this Agreement shall be effective unless it is expressed to be a waiver communicated by notice, in accordance with the provisions of clause 18 (Notices).

### 15. **SEVERABILITY**

- 15.1. If any provision of this licence agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 15.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

### 16. **AMENDMENTS**

GURU may vary this Agreement providing no less than thirty (30) days' written notice to the Customer ("**Variation Notice Period**").



## 17. THIRD PARTY RIGHTS

Unless otherwise expressed to the contrary in this Agreement, nothing in this Agreement confers or purports to confer on any person who is not a party to it any right to enforce any of its terms.

## 18. NOTICES

- 18.1. Any notice required to be given under or pursuant to this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post (except in the event of a current industrial dispute affecting the postal service, when the relevant party shall serve by another means permitted in this clause 18) or by fax or by email to the other party marked for the attention of the recipient's Contact Point at the address or fax number notified to the other party for that purpose from time to time.
- 18.2. A notice delivered by hand will be deemed to have been served when delivered. A correctly addressed notice sent by post will be deemed to have been delivered 48 hours after the time of despatch. A notice sent by fax or email will be deemed to have been delivered on the date of transmission. In proving the service of the notice, it shall be sufficient to prove:
- 18.2.1. in the case of a letter sent by post, that such letter was properly delivered or stamped, addressed and placed in the post (as the case may be); and
- 18.2.2. in the case of a fax or email, that the notice was duly despatched to the current fax number or email address of the addressee and no indication of non-delivery was received by the sender.

## 19. DISPUTE RESOLUTION

- 19.1. Except as otherwise provided, in the event of any dispute arising out of or in relation to this Agreement, the parties must first use their respective best endeavours to consult and negotiate with each other in good faith and, recognising their mutual interests, attempt to reach a settlement of the dispute satisfactory to both parties. To such end the parties must within ten (10) Working Days of a dispute arising convene a meeting between their authorised representatives and any other relevant members of management having regard to the matter under discussion (together, "**Appointed Persons**") to attempt to resolve the dispute.
- 19.2. If the Appointed Persons agree upon a settlement of the dispute, they will sign a statement setting out its terms and the parties will ensure that it is fully and promptly carried out. If the Appointed Persons do not reach such a settlement within twenty (20) Working Days of the meeting convened in accordance with clause 19.1, the parties will refer the dispute to mediation before having recourse to litigation. The mediation shall be conducted in accordance with an Alternative Dispute Resolution procedure recommended by the Centre for Effective Dispute Resolution, London (the "**ADR Procedure**").
- 19.3. If the matter has not been resolved by the ADR Procedure within thirty (30) days of the initiation of that procedure, or if either party will not participate in the ADR Procedure, the dispute shall be decided by the English Courts in accordance with clause 22.

**20. ASSIGNMENT AND SUBCONTRACTING**

- 20.1. The Customer shall not sub-licence assign or transfer the benefit or burden of this Agreement in whole or in part without the prior written consent of GURU.
- 20.2. GURU may assign, charge or otherwise transfer any of its rights or obligations under this Agreement, provided it gives written notice to the Customer of any sub-licence, assignment, charge or other transfer.
- 20.3. GURU may sub-contract the performance of any of its duties under this Agreement, but shall remain responsible for the acts, defaults or neglect of any sub-contractor as if they were its own.

**21. GENERAL**

- 21.1. This Agreement and any document referred to in it constitute the whole and only agreement and understanding between the parties relating to its subject matter and supersedes and extinguishes any drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, between the parties in connection with the subject matter of this Agreement whether existing prior to or at the same time as this Agreement. The express terms of this Agreement are instead of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.
- 21.2. Any purchase order issued by the Customer will be accepted by GURU solely for the purposes of order confirmation and referencing invoices, and no terms or conditions included in, referred to in or attached to any such purchase order will have any effect.
- 21.3. The parties acknowledge and agree that the limitations and exclusions of liability contained in this Agreement are reasonable in all the circumstances.
- 21.4. Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture between the parties; or to constitute either of the parties as the agent of the other party.
- 21.5. This Agreement may be executed in any number of counterparts each of which when executed by one or more of the parties hereto shall constitute an original but all of which shall constitute one and the same instrument.
- 21.6. Nothing in this Agreement will preclude either party from seeking injunctive relief to prevent or stop a breach of confidence or an infringement of intellectual property rights.

**22. GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with English law and, subject to clause 19, the parties irrevocably agree that the courts of England shall have exclusive jurisdiction over any claim or matter or to settle any dispute which may arise out of or in connection with this Agreement and that accordingly any proceedings may be brought in such courts.

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