

Terms of Service

1. Interpretation

The definitions and rules of interpretation in this clause apply in these terms and conditions.

Agreement: the Client Order Form together with these terms and conditions.

Authorised Domains: the websites on which, by the Agreement, the Client is authorised by the Supplier to use the software as listed on the Client Order Form.

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

Client: the client defined in the Client Order Form.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.6 or clause 10.7.

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

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Client Data: the data inputted or supplied by the Client, or the Supplier on the Client's behalf, for the purpose of using the Services or facilitating the Client's use of the Services.

Client Order Form: the document signed by the Supplier and the Client; which sets out the Services and Software ordered by the Client, and the Subscription Term.

Commencement Date: the date this agreement is signed by both parties.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications);

Initial Subscription Term: the initial term of the Agreement as set out in the Client Order Form beginning on the Commencement Date.

Normal Business Hours: 9.00 am to 5.30 pm local UK time, on a Business Day.

Renewal Date: the date details in the Client Order Form for the commencement of the Renewal Term.

Renewal Term: the additional period after the Initial Subscription Term upon which the Services shall be provided by the Supplier to the Client, as set out in the Client Order Form.

Services: the subscription services to the Software provided by the Supplier to the Client in relation to the Authorised URLs under the Agreement as set out in the Client Order Form.

Software: the Recite Me web accessibility software applications provided by the Supplier as part of the Services as set out in the Client Order Form.

Subscription Fees: the subscription fees payable by the Client to the Supplier for the URL Subscriptions as set out in the Client Order Form.

Subscription Term: has the meaning given in clause 13.1 (being the Initial Subscription Term together with any subsequent Renewal Terms).

Supplier: Recite Me Limited (Company No. 07258145) of Office 3.04 Baltimore House Baltic Business Quarter, Gateshead, Tyne And Wear, NE8 3BA.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK.

Domain Subscriptions: the subscriptions purchased by the Client pursuant to clause 8.1 which entitle the Client to access and use the Services and the Documentation in relation to the Authorised Domains in accordance with the Agreement.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access

to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these terms and conditions.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Agreement.

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

1.9 A reference to writing or written includes faxes but not e-mail.

1.10 References to clauses and schedules are to the clauses and schedules of the Agreement; references to paragraphs are to paragraphs of the relevant schedule to the Agreement.

2. Domain subscriptions

2.1 Subject to the Client purchasing the Domain Subscriptions in accordance with clause 8.1, the restrictions set out in this clause 2 and the other terms and conditions of these terms and conditions, the Supplier hereby grants to the Client a non-exclusive, non-transferable right, without the right to grant sublicences, to use the Services and the Documentation during the Subscription Term solely in relation to the Authorised Domains, to facilitate access to the Authorised Domains for the benefit of the Client's customers.

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

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

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

2.3 The Client shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the Agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Services and/or Documentation to provide services to third parties; or
- (d) subject to clause 21.1, licence, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party, except as required for the purpose of using the Services in relation to the Authorised URLs, or

- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; and
- 2.4 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 2.5 The rights provided under this clause 2 are granted to the Client only, and shall not be considered granted to any subsidiary, holding company or otherwise associated entity of the Client.
- 3. Services**
- 3.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Client on and subject to the terms of the Agreement.
- 3.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
 - (a) planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time or between such times are by time to time appropriate; and
 - (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Client at least 6 Normal Business Hours' notice in advance.
- 3.3 The Supplier will, as part of the Services and at no additional cost to the Client provide the Client with the Supplier's standard client support services during Normal Business Hours in accordance with the Supplier's Service Level Agreement (Appendix A) in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Client may purchase enhanced support services separately at the Supplier's then current rates.
- 4. Client data**
- 4.1 The Client shall own all right, title and interest in and to all of the Client Data held by the Supplier that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Client Data.
- 4.2 In the event of any loss or damage to Client Data held by the Supplier, the Client's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Client Data from the latest back-up of such Client Data maintained by the Supplier. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Client Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Client Data maintenance and back-up for which it shall remain fully liable under clause 4.8).
- 4.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 4 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 4.4 The parties acknowledge that:
 - (a) if the Supplier processes any personal data on the Client's behalf when performing its obligations under the Agreement, the Client is the controller and the Supplier is the processor for the purposes of the Data Protection Legislation.
 - (b) the personal data may be transferred or stored outside the EEA or the country where the Client are located in order to carry out the Services and the Supplier's other obligations under the Agreement.
- 4.5 Without prejudice to the generality of clause 4.4, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Agreement so that the Supplier may lawfully use, process and transfer the personal data in accordance with the Agreement on the Client's behalf.
- 4.6 Without prejudice to the generality of clause 4.4, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Agreement:
 - (a) process that personal data only on the documented written instructions of the Client unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier and/or Domestic UK Law (where **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (**Applicable Laws**). Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Client;
 - (b) not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
 - (i) the Client or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the personal data;
 - (c) assist the Client, at the Client's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (d) notify the Client without undue delay on becoming aware of a personal data breach;
 - (e) at the written direction of the Client, delete or return personal data and copies thereof to the Client on termination of the Agreement unless required by Applicable Law to store the personal data; and
 - (f) maintain complete and accurate records and information to demonstrate its compliance with this clause 4 and immediately inform the Company if, in the opinion of the VAR, an instruction infringes the Data Protection Legislation.
- 4.7 Each party shall ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- 4.8 The Client consents to the Supplier appointing a third party processor of personal data under the Agreement.
- 5. Third party providers**
- The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any third-party website, or any transactions completed, and any contract entered into by the Client, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Client and the relevant third party, and not the Supplier. The Supplier recommends that the Client refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.
- 6. Supplier's obligations**
- 6.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, the Supplier:

- (a) does not warrant that the Client's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Client through the Services will meet the Client's requirements; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.3 The Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Agreement.
- 6.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Agreement.
- 7. Client's obligations**
- The Client shall:
- (a) provide the Supplier with:
- (i) all necessary co-operation in relation to the Agreement; and
- (ii) all necessary access to such information as may be required by the Supplier;
- in order to provide the Services, including but not limited to Client Data, security access information and configuration services;
- (b) without affecting its other obligations under the Agreement, comply with all applicable laws and regulations with respect to its activities under the Agreement;
- (c) carry out all other Client responsibilities set out in the Agreement in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that its directors, employees, and agents use the Services and the Documentation in accordance with the terms and conditions of the Agreement and shall be responsible for any breach of the Agreement by those persons;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under the Agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in the Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet.
- (h) not, during the Subscription Term, contract with suppliers of software similar to this Software.
- 8. Charges and payment**
- 8.1 The Client shall pay the Subscription Fees to the Supplier for the Domain Subscriptions in accordance with this clause 8.
- 8.2 The Client shall make payment to the Supplier no later than 30 days from date of Invoice.
- 8.3 If the Supplier has not received payment in full of the Subscription Fees by the invoice due date 8.2, and without prejudice to any other rights and remedies of the Supplier:
- (a) the Supplier may, without liability to the Client, disable the Client's access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while amounts due remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts owing at an annual rate equal to 4% over the then current base lending rate of Barclays Bank Plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 8.4 All amounts and fees stated or referred to in the Agreement:
- (a) shall be payable in pounds sterling;
- (b) are, subject to clause 13.3(b), non-cancellable and non-refundable; and
- (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 8.5 The Supplier shall be entitled to increase the Subscription Fees at the start of each Renewal Term upon 3 months' prior notice to the Client and the Proposal Form shall be deemed to have been amended accordingly.
- (a) The maximum increase in Subscription Fees will be no more than 10% of either the Initial Subscription Fees or the most Recent Renewal Term Fees.
- 9. Proprietary rights**
- 9.1 The Client acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, the Agreement does not grant the Client any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 9.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Agreement.
- 10. Confidentiality**
- 10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 10.2 Subject to clause 10.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Agreement.
- 10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Agreement.
- 10.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 10.6 The Client acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 10.7 The Supplier acknowledges that the Client Data is the Confidential Information of the Client.
- 10.8 No party shall make, or permit any person to make, any public announcement concerning the Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 10.9 The above provisions of this clause 10 shall survive termination of the Agreement, however arising.
- 11. Indemnity**
- 11.1 The Client shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Client's use of the Services and/or Documentation, provided that:

- (a) the Client is given prompt notice of any such claim;
- (b) the Supplier provides reasonable co-operation to the Client in the defence and settlement of such claim, at the Client's expense; and
- (c) the Client is given sole authority to defend or settle the claim.
- 11.2 The Supplier shall defend the Client, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, provided that:
- (a) the Supplier is given prompt notice of any such claim;
- (b) the Client provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
- (c) the Supplier is given sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of any claim, the Supplier may procure the right for the Client to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Agreement on 2 Business Days' notice to the Client without any additional liability or obligation to pay liquidated damages or other additional costs to the Client.
- 11.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Client to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than the Supplier; or
- (b) the Client's use of the Services or Documentation in a manner contrary to the instructions given to the Client by the Supplier; or
- (c) the Client's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 11.5 The foregoing and clause 13.3(b) state the Client's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 12. Limitation of liability**
- 12.1 Except as expressly and specifically provided in the Agreement:
- (a) the Client assumes sole responsibility for results obtained from the use of the Services, the Software, and the Documentation by the Client, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Client in connection with the Services, or any actions taken by the Supplier at the Client's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Agreement; and
- (c) the Services and the Documentation are provided to the Client on an "as is" basis.
- 12.2 Nothing in the Agreement excludes the liability of the Supplier:
- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.
- 12.3 Subject to clause 12.1 and clause 12.2:
- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Agreement; and
- (b) the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to £5,000 or the value Subscription Fees of the Initial Subscription Term, whichever is the lesser of the two.
- 13. Term and termination**
- 13.1 The Agreement shall, unless otherwise terminated as provided in this clause 13, commence on the Commencement Date and shall continue for the Initial Subscription Term and, thereafter, the Agreement shall be automatically renewed for successive periods of the Renewal Term, unless:
- (a) either party notifies the other party of termination, in writing, at least 3 months but not more than 6 months before the end of the Initial Subscription Term or any Renewal Term, in which case the Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Term respectively; or
- (b) otherwise terminated in accordance with the provisions of the Agreement.
- 13.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Agreement with immediate effect by giving written notice to the Client if:
- (a) the Client fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the Client commits a material breach of any other term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 15 days after being notified in writing to do so;
- (c) the Client suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (d) the Client commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Client with one or more other companies or the solvent reconstruction of the Client;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Client other than for the sole purpose of a scheme for a solvent amalgamation of the Client with one or more other companies or the solvent reconstruction of the Client;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Client;
- (g) the holder of a qualifying floating charge over the assets of the Client has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the Client or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the Client attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Client's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the Client in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2(c) to clause 14.2(i) (inclusive);
- (k) the Client suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (l) there is a change of control of the Client – without notice in writing given to the Supplier, to which the Supplier consents;
- 13.3 On termination of the Agreement for any reason:
- (a) all licences granted under the Agreement shall immediately terminate and the Client shall immediately cease all use of the Services and/or the Documentation;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) the Supplier may destroy or otherwise dispose of any of the Client Data in its possession in accordance with clause 5.7(c);
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

14. Force majeure

The Supplier shall have no liability to the Client under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Client is notified of such an event and its expected duration.

15. Conflict

If there is an inconsistency between any of the provisions in the main body of the Agreement and Client Order Form, the provisions in the main body of the Agreement shall prevail.

16. Variation

No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. Waiver

No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18. Rights and remedies

Except as expressly provided in the Agreement, the rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

19. Severance

19.1 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Agreement.

19.2 If any provision or part-provision of the Agreement is deemed deleted under clause 19.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. Entire agreement

20.1 These terms and conditions and the Client Order Form shall constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

20.2 Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement.

20.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

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

21. Assignment

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

21.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

22. No partnership or agency

Nothing in the Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23. Third party rights

The Agreement does not confer any rights on any person or party (other than the parties to the Agreement and, where applicable, their

successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

24. Notices

24.1 Any notice required to be given under the Agreement shall be in writing to the email address set out in the Client Order Form.

24.2 A notice sent by email shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

25. Governing law

The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

26. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

Appendix A

Service Level Agreement

1. During each month of this Agreement the Supplier undertakes to the Client that the Software shall be capable of being accessed (except where inaccessibility is caused by backbone outage or power failure of the National power suppliers or any event of Force Majeure) no less than 99.9% of the time during normal working hours of 09:00 to 17:00.*

2. During each month of this Agreement the Supplier undertakes to the Client that the server on which the Software is hosted and the ancillary equipment out to the relevant router shall have no more than 1.0% down time.*

3. The Supplier undertakes that the Software is backed-up at least once every 24 hours and secured in accordance with good industry practice.

4. The Supplier will monitor the Software on the relevant server and if at any time the Software is not fully accessible for 2 hours or more then the Supplier shall notify the Client immediately and the Supplier shall start correcting the problem immediately and shall continue working on it until it is remedied.

5. The Supplier will ensure that:

a. all planned maintenance will be undertaken outside of the normal working hours referred to above

b. all planned maintenance which may result in the Software not being available for more than 2 hours will be notified to all clients prior to carrying out such maintenance

c. Notice of emergency maintenance will be given as soon as is practicable.

* For clarity, the difference between points 1 and 2 reflects that within normal working hours our team can react in real time to any issue, whereas out of hours this may take a little longer, and to allow for any planned system downtime for maintenance or upgrades.

Additional Fees

The Supplier agrees to provide up to 0.5 days of development or technical support for implementations to ensure smooth addition of Recite Me to agreed client Domains.

Any development requirements bespoke to the Client and outside the normal expected implementation development work (examples include but are not limited to bespoke language drop down selectors, integration with custom CMS, assistance with iFrames) will be charged at the prevailing day rate of £999. Minimum chargeable unit is 0.5 days.