

## Terms and Conditions

These “Terms and Conditions”, together with the Service Level Agreement, Security Provisions and the Personal Data Processing Provisions, the Documentation, any fully executed Order Form(s) and Implementation SOW applicable to the ordered Services shall constitute the legally binding agreement between the client (the “Client”) and the applicable Concentra entity (as each named in any fully executed Order Form) in relation to the provision of any of the Services as detailed within such Order Form(s) (“Agreement”).

The Client and Concentra are each a “Party” and together shall be referred to as the “Parties” within the Agreement.

The Client is responsible for reviewing all of the documents that constitute the Agreement prior to executing each Order Form.

The rights and obligations of the Parties in relation to any ordered Services shall be governed by the Agreement. In the event of any conflict or inconsistency between certain provisions contained within different documents that constitute the Agreement, the following order of precedence shall prevail with respect to resolving such conflict or inconsistency: (1) the Order Form; (2) these Terms and Conditions; and (3) the Documentation.

### OPERATIVE PROVISIONS

#### 1. DEFINITIONS AND INTERPRETATION

1.1 In the Agreement, the following words have these meanings:

<b>Affiliate</b>	means any Subsidiary and Associated Company;
<b>Applicable Laws</b>	means all applicable federal, state, local and foreign laws, statutes, ordinances, rules, regulations and directives of the jurisdiction applicable to Concentra in relation to the provision of any of the Services;
<b>Associated Company</b>	means any associated company of either Party from time to time within the meaning of Section 449 of the Corporation Tax Act 2010 or any subordinate legislation;
<b>Client Administrator</b>	means the individual appointed by the Client, as detailed on the Order Form, who is responsible for the administration of the Tenant;
<b>Client Data</b>	means the data uploaded by the Client into the Tenant. Client Data does not include Usage Data;
<b>Confidential Material</b>	<p>of either Party means all information and material relating to the business, customer and supplier information, systems or affairs of that Party, its representatives or its Clients that is or has been:</p> <ul style="list-style-type: none"><li>(a) disclosed by that Party to the other Party under or in connection with the Agreement, whether orally, electronically, in writing or otherwise, including copies; or</li><li>(b) learnt, acquired or generated by the other Party in connection with the Agreement;</li></ul> <p>including, without limitation:</p> <ul style="list-style-type: none"><li>(a) the terms of the Agreement; and</li><li>(b) details of the Software and the Services.</li></ul>

<b>Content</b>	All content generated by the Software using Client Data, including graphs, charts, images, reports and other visual representations of the Client Data;
<b>Deliverable</b>	means the deliverable that form part of the Implementation Services as more particularly set out in the applicable Implementation SOW;
<b>Documentation</b>	means the documentation made available to the Client by Concentra that refers to and governs the performance of the Services;
<b>Fees</b>	means the fees for the Services, as more particularly detailed in the Order Form;
<b>Good Industry Practice</b>	means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a company within the relevant industry or business sector offering the same services to a client of similar standing;
<b>Hosting Services</b>	means the services provided by Concentra to allow Users to access and use the Tenant, including hosting set-up and ongoing services;
<b>Implementation Services</b>	means the services provided by Concentra to implement the Tenant, as more particularly set out in the Implementation SOW;
<b>Implementation SOW</b>	means the work order which sets out the Implementation Services;
<b>Initial Term</b>	means the initial term of each Service as set out in each Order Form;
<b>Learning Management System</b>	means Concentra's learning management system accessible by the Client;
<b>Limitations</b>	means the limit on number of nodes permitted within the Tenant as set out in the Order Form;
<b>Normal Working Hours</b>	means 8.00 am to 6.00 pm UK time, each Working Day;
<b>Order Form</b>	means an order form relating to the provision of any of the Services;
<b>Personal Data Processing Provisions</b>	means the provisions relating to the Parties' responsibilities in respect of the processing of personal data under the Agreement, available at <a href="https://www.concentra.co.uk/terms-and-conditions">https://www.concentra.co.uk/terms-and-conditions</a> or such other website address as may be notified to the Client from time to time, as such document may be amended from time to time by Concentra in its sole discretion;
<b>Purpose</b>	means the purpose specified in the Order Form;
<b>Renewal Term(s)</b>	means the subsequent annual period(s) following the end of the Initial Term;
<b>Security Provisions</b>	means the security provisions relating to the Services available at <a href="https://www.concentra.co.uk/terms-and-conditions">https://www.concentra.co.uk/terms-and-conditions</a> or such other website address as may be notified to the Client from time to time, as such document may be amended from time to time by Concentra in its sole discretion;
<b>Service Level Agreement (SLA)</b>	means the service level agreement available at <a href="https://www.concentra.co.uk/terms-and-conditions">https://www.concentra.co.uk/terms-and-conditions</a> or such other website

address as may be notified to the Client from time to time, as such document may be amended from time to time by Concentra in its sole discretion;

<b>Services</b>	means the Implementation Services, Hosting Services, the provision of and access to the Tenant and the services set out in the SLA;
<b>Software</b>	means the proprietary modules of Concentra's software application;
<b>Subsidiary</b>	means any subsidiary of either Party from time to time within the meaning of Section 1159 of the Companies Act 2006 or in any subordinate legislation made under the Companies Act 2006;
<b>Subcontractor</b>	means Amazon Web Services of 1200 12th Ave S, Ste 1200, Seattle, WA 98144 United States (for OrgVue) through one of its Subsidiaries or Microsoft Azure, Microsoft Corporation, One Microsoft Way, Redmond, WA, 98052-6399 (for SupplyVue and DataPlus) through one of its Subsidiaries or as replaced from time to time;
<b>Tenant</b>	means the Client's dedicated instance of the Software;
<b>Term</b>	means the Initial Term and any subsequent Renewal Terms;
<b>Usage Data</b>	has the meaning set out in Clause 9.3;
<b>User</b>	means those persons authorised by the Client Administrator to access the Tenant;
<b>User Management</b>	means the administration of User access to the Tenant;
<b>Virus</b>	means 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; and
<b>Working Day</b>	means unless specified otherwise, a day in which banks are generally open for business in the applicable jurisdiction of the Concentra entity set out on the Order Form.

In the Agreement:

- 1.2 the words "include", "includes", "including", "included", "in particular", "for example" and "such as" shall be construed without limitation and the words "especially", "other" and "otherwise" are illustrative and shall not limit the generality of any preceding words;
- 1.3 any reference to a person includes an individual, firm, company, corporation, body corporate, joint venture, government agency, partnership, association or unincorporated body (whether or not having separate legal personality) or other legal entity (regardless of their location of incorporation or establishment, as the case may be).
- 1.4 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 1.5 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 any reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Agreement.
- 1.7 any 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.
- 1.8 any reference to writing or written includes e-mail.
- 1.9 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.
- 1.10 Clause, schedule and paragraph headings shall not affect the interpretation of the Agreement.

## **2. ORDERING PROCEDURE**

The Client may order any of the Services by completing and executing an Order Form and Implementation SOW, for each order of such Services.

## **3. SERVICES**

- 3.1 Upon an Order Form being fully executed by both Parties, Concentra shall, during the Term, provide to the Client the Services ordered within such Order Form.
- 3.2 Concentra shall undertake regular Virus checks of the Software throughout the Term of the Agreement.
- 3.3 Concentra shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except where there is:
  - (a) planned maintenance carried out during the maintenance window of every Sunday between 6.00am – 10.00am (UK time); and
  - (b) unscheduled maintenance due to an emergency. Concentra shall use its reasonable endeavours to perform any such unscheduled maintenance outside Normal Working Hours and to give the Client at least 2 hours' notice in advance in such instances.
- 3.4 Concentra shall perform the Services in accordance with and subject to:
  - (a) these Terms and Conditions;
  - (b) the SLA;
  - (c) the Security Provisions;
  - (d) the Personal Data Processing Provisions;
  - (e) the Documentation
  - (f) the applicable fully executed Order Forms and/or Implementation SOWs; and
  - (g) Good Industry Practice.

The Client acknowledges and agrees that the Solutions (as defined within the SLA) shall be, and contain, Concentra's sole liability and the Client's exclusive remedies in respect of any failure to provide the Services in accordance with the Agreement.

## **4. IMPLEMENTATION SERVICES**

- 4.1 Implementation Services shall include access to the Learning Management System but shall not include on-going professional services, which if required, will be provided subject to a different type of SOW and shall be governed by Concentra's standard contract entitled "Services Agreement".

- 4.2 Concentra shall perform the Implementation Services in accordance with the Deliverables set out in the Implementation SOW. Concentra shall use reasonable endeavours to meet the performance dates set out in Implementation SOW, but any such dates shall be estimates only, and time shall not be of the essence in the Agreement.
- 4.3 Within five Working Days of Concentra's completion of each Deliverable, the Client shall review the Implementation Services applicable to the Deliverable and confirm that it complies with the Implementation SOW. If the Deliverable fails in any material respect to comply with the Implementation SOW, the relevant procedure contained within the Implementation SOW shall apply.

## 5. SUBSCRIPTIONS AND RESTRICTIONS

- 5.1 Subject to the Client making payment in accordance with Clause 7, and complying (and ensuring that its Users and other staff comply) with the Limitations and the restrictions set out in this Clause 5, Concentra hereby grants to the Client a non-exclusive, non-transferable right, without the right to grant sublicenses, to permit the Users to access the Tenant for the purposes of using the Software and the Documentation during the Initial Term (and any subsequent Renewal Terms) solely for the Client's internal business operations.
- 5.2 The Client shall:
- (a) follow Concentra's instructions and in accordance with the Documentation for access to the Tenant and use of the Software;
  - (b) ensure that the Tenant is accessed and the Services are used properly by Users in accordance with Concentra's instructions and the Documentation;
  - (c) train its Users to use the Services, including by completing (and requiring them to complete) the training in the Learning Management System;
  - (d) make available to Concentra such information as is required to enable Concentra to perform the Services, including providing all necessary security access; and
  - (e) provide Concentra with all necessary co-operation in relation to the Agreement.
- 5.3 The Client shall appoint a Client Administrator who shall be responsible for User Management, including the setting up of Users and removing Users when they cease to be authorised to use the Services. The Client shall ensure that the Client Administrator and each User is an employee of the Client with sufficient skills, training and seniority to undertake the roles and responsibilities referred to in this Clause 5.3. The Client acknowledges that failings in its User Management responsibilities and/or inappropriate/inaccurate User Management may allow unauthorised users to access confidential and/or personal data and that such unauthorised access may be unlawful and/or give rise to complaints and/or civil claims and/or criminal prosecutions for which the Client agrees it will be liable, responsible and culpable.
- 5.4 In relation to the Users and Limitations, the Client undertakes that:
- (a) it shall ensure that each User account is only used by one individual User unless it has been reassigned by the Client Administrator in its entirety to another User, in which case the prior User shall no longer have any right to access or use the Services, Software and Tenant;
  - (b) each User shall keep a secure password for his use of the Services, Software and Tenant and that each User shall keep his password confidential;
  - (c) it shall comply with the Limitations;
  - (d) it shall, within 10 Working Days of a receiving a request from Concentra or Concentra's designee, demonstrate its compliance with the Limitations and the Agreement. Each such request may be made no more than once per quarter.
  - (e) if any of the requests referred to in Clause 5.4(d) above reveal that the Client has exceeded the Limitations and therefore underpaid Fees to Concentra, then without prejudice to its other rights, Concentra may request that the Client shall pay to Concentra an amount equal to such

underpayment, as well as paying all reasonable costs incurred by Concentra in analysing the information provided to it by the Client to demonstrate its compliance.

5.5 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 Concentra 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 5.5.

5.6 The Client shall not:

- (a) except as may be allowed by any Applicable Laws 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;
  - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
- (b) access all or any part of the Services, Software, Tenant and Documentation in order to build a product, software or service which competes with the Services and/or the Software; or
- (c) use the Services, Software, Tenant and/or Documentation to provide a service bureau or to provide services to third parties;
- (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services, Software, Tenant and/or Documentation available to any third Party except the Users; or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services, Software, Tenant and/or Documentation, other than Users.

5.7 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, Software, Tenant and/or the Documentation and, in the event of any such unauthorised access or use, shall promptly notify Concentra.

5.8 The rights provided under this Clause 5 are granted to the Client only and shall not be considered granted to any subsidiary or holding company of the Client.

5.9 Concentra shall not be liable for any breach of the Agreements that is caused in full or in part by the Client's failure to comply with this Clause 5.

## **6. DATA SECURITY AND COMPLIANCE**

6.1 The Security Provisions set out Concentra's responsibility in respect of its handling of the Client Data.

6.2 The Personal Data Processing Provisions set out each of the Party's responsibilities in respect of Personal Data compliance (as defined within such provisions).

## 7. FEES

- 7.1 The Client shall pay Concentra the Fees annually in advance unless otherwise stated on the applicable Order Form.
- 7.2 At the commencement of each year of the Term, Concentra reserves the right to increase the Fees by an amount not to exceed 7% per year. Concentra shall notify the Client of any such increases at least 30 days in advance of each anniversary of the effective date (as specified in the Order Form relating to each ordered Service).
- 7.3 The Client shall pay Concentra for all other applicable fees and out-of-pocket expenses (including, but not limited to, reasonable and customary travel, accommodation, and living expenses) incurred by Concentra in the performance of the Services, which shall be calculated in accordance with Concentra's then applicable expenses policy and included with any invoice from Concentra.
- 7.4 The Client shall pay each undisputed invoice within 30 days of its invoice date. The Client shall not be permitted to make any deduction from the Fees whether in respect of set-off, counterclaim or otherwise.
- 7.5 Without prejudice to any of its other rights, if the Client fails to make any payment when due, Concentra shall be entitled to:
- (a) suspend provision of the Services for so long as any payment due hereunder remains outstanding; and/or
  - (b) charge interest on the overdue amount at the greater of 4% above the Bank of England's base rate or the maximum rate allowable per the Applicable Law on all such past due amounts.
- 7.6 All fees set forth in the Agreement are exclusive of applicable taxes and duties, including UK VAT, GST and/or applicable sales or usage tax. The Client will provide Concentra with any information Concentra may reasonably request in order to determine whether Concentra is obligated to collect UK VAT, GST sales or usage tax from the Client, including the Client's UK VAT, GST or tax payer identification number. If the Client is legally entitled to an exemption from any sales, use, or similar transaction tax, the Client is responsible for providing Concentra with legally sufficient tax exemption certificates or other comparable documentation for each taxing jurisdiction. Concentra will apply the tax exemption certificates or other documents to charges under the Client's account occurring after the date Concentra receives the tax exemption certificates or other comparable documents, and shall have no obligation to recognise any tax exemption for any period before it received a tax exemption certificate or other comparable document.
- 7.7 The Client shall make all payments without withholding or deduction of, or in respect of, any tax unless required by law. If any such withholding or deduction is required, the Client shall pay to Concentra such additional amount as will ensure that Concentra receives the same total amount that it would have received if no such withholding or deduction had been required.

## 8. TERM AND TERMINATION

- 8.1 The Initial Term of each order will commence on the effective date (as specified in each Order Form) and will continue for a three year period unless a different period is specified in such Order Form. The term of the order shall automatically renew for a Renewal Term unless either Party provides not less than 60 Working Days' prior written notice of its desire not to renew in which event the Term shall expire at the conclusion of the Initial Term or renewal term, as the case may be.
- 8.2 Either Party ("**Initiating Party**") may terminate the Agreement at any time forthwith by notice in writing if:
- (a) the other Party (the "**Breaching Party**") is in material breach of any of its material obligations and (if the breach is capable of remedy) fails to remedy the breach within thirty (30) Working

Days after receipt of notice in writing from the Initiating Party giving particulars of the breach and requiring the Breaching Party to do so;

- (b) the other Party suffers an Insolvency Event; or
- (c) the other Party commits any irremediable breach of the Agreement.

8.3 If any Force Majeure event relied upon by either Party shall have been continually relied upon for more than 60 successive days by such Party, and is continuing, the other Party shall be entitled to terminate the Agreement immediately upon written notice to the other Party.

8.4 Upon and after the termination or expiration of the Agreement for any or no reason: (a) the Client's rights granted hereunder will immediately terminate and the Parties shall cease all activities hereunder; (b) the Client shall pay all amounts due upon such effective date of termination; (c) Concentra shall, on the Client's written request and at Concentra's applicable standard daily rates, provide reasonable assistance with the migration of any Client Data to the Client's IT systems; (d) Concentra shall, within 3 months of termination of the Agreement, delete all Client Data from its IT systems; and (e) Clauses 6, 9, 11, 12, 13, 14 and 15 shall survive termination.

## 9. PROPRIETARY RIGHTS

9.1 Concentra acknowledges and agrees that the Client shall own all rights (including intellectual property rights), title and interest in and to all of the Client Data and content and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the same.

9.2 The Client hereby grants to Concentra and its Subcontractors a limited, revocable, royalty-free, fully-paid up, worldwide, non-exclusive, non-transferable and non-sublicensable license to host, display and use the Client Data and the Content as necessary or useful in order to provide the Services for Client's benefit as provided in the Agreement and/or to enforce the Agreement.

9.3 For the avoidance of doubt, Client Data does not include any and all information relating to the access to, and use of, the Services ("**Usage Data**"). The Client acknowledges and agrees that Concentra gathers and interrogates Usage Data from the Client and other clients in order to improve the Services.

9.4 The Client acknowledges and agrees that Concentra collects email addresses of all Client Administrators and shall utilise these details solely for the purposes of contacting the Client Administrators in order to provide support or information in regards to the Software or Tenant.

9.5 The Client acknowledges and agrees that Concentra and/or its licensors own all intellectual property rights in the Services, Software, Documentation, Usage Data and any database containing the Client Data (when located within Concentra's technology environment). Except in respect of the licenses to receive and use the Services, the Agreement does not grant the Client any rights (including intellectual property rights), title or interest in and to, the Services, Software, Documentation or Tenant or in any development to the Services or Documentation.

9.6 Concentra 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. WARRANTIES AND REPRESENTATIONS

10.1 Each Party represents that it has validly entered into the Agreement and has the legal power to do so.

10.2 Concentra warrants that (a) it has all rights and permissions required to grant the licenses contained in the Agreement and to provide the licenses; and (b) during the Term:

- (a) the Services will perform materially in accordance with the applicable Documentation; and
- (b) it will not materially decrease the overall functionality of the Services.



- 10.3 EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY OTHER REPRESENTATION, WARRANTY, CONDITION OR PROMISE OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, CUSTOMARY, A COURSE OF DEALING OR TRADE PRACTICE OR OTHERWISE WITH RESPECT TO THE SUBJECT MATTER OF THE AGREEMENT AND WHETHER MADE IN WRITING OR ORALLY.
- 10.4 EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED TERMS, WARRANTIES OR CONDITIONS, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. IN PARTICULAR, CONCENTRA DOES NOT WARRANT THAT THE SERVICES WILL MEET THE CLIENT'S REQUIREMENTS OR THAT THEY WILL OPERATE UNINTERRUPTED OR ERROR FREE. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

## 11. CONFIDENTIALITY

- 11.1 Each Party shall keep confidential and shall not make available or disclose the Confidential Material of the other Party to any person, or make or permit any use of such Confidential Material without the prior written consent of the other Party, except that such Confidential Material may be made available or disclosed to and used by those, and only those, of the staff of the receiving Party as are required for the purpose of fulfilling the receiving Party's obligations under the Agreement. Each Party shall take all reasonable steps to ensure that any such Confidential Material disclosed to any person in accordance with this Clause 11 is treated as confidential by the person to whom it is disclosed and shall require its subcontractors to enter into a confidentiality agreement which imposes confidentiality obligations no less protective of the Confidential Material than those imposed upon under the Agreement.
- 11.2 Nothing in this Clause 11 shall prevent either Party from disclosing Confidential Material where it is required to be disclosed by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceeding or claim or otherwise by applicable law; provided, however, that a Party shall, if legally permitted, give the other Party prior reasonable notice as soon as possible, of such required disclosure so as to enable the other Party to seek relief from such disclosure requirement or measures to protect the confidentiality of the disclosure.
- 11.3 Without prejudice to any other rights or remedies that a Party may have, both Parties acknowledge and agree that the other Party may not have an adequate remedy at law for any breach of the provisions of this Clause 11, and that therefore the other Party shall be entitled to equitable relief including injunctive relief.
- 11.4 The provisions of this Clause 11 shall not apply to any Confidential Material which:
- (a) is or becomes commonly known within the public domain other than by breach of the Agreement; or
  - (b) is independently developed without reference to any Confidential Material.

## 12. INDEMNITIES

- 12.1 Subject to Clauses 12.2 and 12.5 below, Concentra undertakes to be responsible, at its cost, for handling (including but not limited to conducting the defence of) any claim, demand, suit or proceeding ("**Claim**") made or brought against the Client by a third party alleging that the Services infringe or misappropriate such third party's intellectual property rights and will indemnify the Client from any damages, attorney fees and costs finally awarded against the Client as a result of the same. If Concentra receives information about an infringement or misappropriation claim related to the Services, Concentra may, in its sole discretion and at no cost to the Client:
- (a) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching Concentra's warranties;
  - (b) obtain a license for the Client's continued use of the Services in accordance with the Agreement.

- 12.2 The defence and indemnification obligations contained within Clause 12.1 above do not apply if:
- (a) the allegation does not state with specificity that the Services are the basis of the Claim;
  - (b) a Claim arises from the use or combination of the Services or any part thereof with software, hardware, data or processes not provided by Concentra, if the Services or use thereof would not infringe without such combination.
- 12.3 Subject to Clause 12.5 below, the Client will defend Concentra and its Affiliates against any Claim, made or brought against Concentra by a third Party alleging that:
- (a) any of the Client Data, or the Client's use of the Client Data with the Services, infringes or misappropriates such third party's intellectual property rights; or
  - (b) arising from the Client's use of the Services in an unlawful manner or in violation of the Agreement, the Documentation or Order Form; and
  - (c) Client will indemnify Concentra on demand from any damages, attorney fees and costs finally awarded against Concentra as a result of, or for any amounts paid by Concentra under a settlement approved by Concentra in writing of, a Claim Against Concentra, provided that Concentra complies with the claim conduct procedure set out under Clause 12.5 below.
- 12.4 Subject to Clause 12.5 below, Concentra undertakes to be responsible, at its cost, for handling (including but not limited to conducting the defence of) any Claim made or brought against the Client by a third party alleging a breach of the Security Provisions and will indemnify the Client from any damages, attorney fees and costs finally awarded against the Client as a result of the same. Concentra's total and aggregate liability to the Client under this Clause 12.4 shall be limited to the value of £1,000,000 (one million pounds sterling).
- 12.5 The defence and indemnifications obligations contained in this Clause 12 will only apply where, and shall be conditional upon, the indemnified Party:
- (a) promptly gives the indemnifying Party written notice of the claim (or Claim Against Concentra, as applicable);
  - (b) gives the indemnifying Party sole control of the defence and settlement of the claim (or Claim Against Concentra, as applicable) (except that the indemnifying Party may not settle any Claim (or Claim against Concentra, as applicable) unless it unconditionally releases the indemnified Party of all liability); and
  - (c) gives the indemnifying Party all reasonable assistance, at the indemnified Party's expense.
- 12.6 This Clause 12 is the indemnifying Party's sole liability to, and the indemnified Party's exclusive remedy against, the other Party for any Claim.

### **13. LIMITATION OF LIABILITY**

- 13.1 Except as expressly and specifically provided in the Agreement:
- (a) the Client assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Client, and for conclusions drawn from such use. Concentra shall have no liability for any damage caused by Client's use of the Services, errors or omissions in any information, instructions or scripts provided to Concentra by the Client in connection with the Services, or any actions taken by Concentra at the Client's direction;
- 13.2 Nothing in the Agreement excludes the liability of the either Party:
- (a) for death or personal injury resulting from any negligence of either Party;
  - (b) in respect of indemnities given in 12.1 and 12.3;
  - (c) for fraud or fraudulent misrepresentation; or
  - (d) any other form of liability which cannot be limited or excluded under Applicable Law.

13.3 SUBJECT TO CLAUSE 13.2, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY PARTY CLAIMING THROUGH OR UNDER THE OTHER PARTY FOR ANY LOSS OF USE OR ANY LOSS DUE TO A FAILURE OF THE SERVICES, LOSS OF ACTUAL OR ANTICIPATED PROFITS, LOSS OF BUSINESS, CONTRACTS AND ANTICIPATED SAVINGS, OR SOFTWARE, EQUIPMENT DOWNTIME, OR FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL LOSSES, COSTS, CHARGES, EXPENSES OR DAMAGES, HOWEVER ARISING, RESULTING FROM THE AGREEMENT OR THE PERFORMANCE OR USE OF THE SERVICES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUBJECT TO 13.2, EACH PARTY'S LIABILITY TO THE OTHER SHALL BE LIMITED TO THE FEES PAID BY THE CLIENT TO CONCENTRA UNDER THE AGREEMENT DURING THE TWELVE MONTH PERIOD PRECEDING THE CAUSE OF ACTION AT ISSUE (OR, IF THE RELEVANT LIABILITY ARISES WITHIN THE PERIOD OF 12 MONTHS AFTER THE DATE OF THE AGREEMENT, AN AMOUNT EQUAL TO THE FEES LIKELY TO BE PAYABLE BY THE CLIENT TO CONCENTRA IN THE FIRST 12 MONTHS OF THE DATE OF THE AGREEMENT).

#### **14. GENERAL**

14.1 The Client acknowledges that Concentra subcontracts (and intends to continue to subcontract) the provision of the Hosting Services to the Subcontractor. In the event that Concentra decides to engage a different Subcontractor it will give the Client a minimum of 3 months' notice before doing so.

14.2 The parties to the Agreement do not intend that any term of the Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person who is not a Party to the Agreement.

14.3 The Agreement constitutes the entire agreement between the Parties in relation to its subject matter, and replaces and extinguishes all prior agreements, undertakings, arrangements, understandings, communications or statements of any nature made by the parties, whether oral or written, with respect to such subject matter.

14.4 Each Party acknowledges that it has not relied on any statements, warranties or representations given or made by any other Party under or in relation to the Agreement, save those expressly set out in the Agreement. Each Party further acknowledges that it shall have no rights or remedies with respect to such subject matter other than under the Agreement. Each Party acknowledges and agrees that nothing in this Clause 14 is intended to limit or exclude any Party's liability for fraudulent misrepresentation.

14.5 No variation of the Agreement shall be effective unless made in writing and signed by the parties hereto or their duly authorised representatives.

14.6 The rights, powers and remedies provided in the Agreement are cumulative and (unless otherwise provided in the Agreement) are not exclusive of any rights, powers and remedies provided by law or otherwise.

14.7 No relaxation, forbearance or indulgence by either Party in enforcing any of the terms or conditions of the Agreement against the other or the granting of time by either Party to the other shall be deemed to be a waiver or shall prejudice, affect or restrict the rights and powers of that Party against the other, nor shall any waiver by either Party of any breach by the other operate as a waiver of or in relation to any other, subsequent or continuing breach of the Agreement.

14.8 If any provision of the Agreement is found by any court, regulatory or administrative body of competent jurisdiction to be illegal, invalid or unenforceable, and the provision in question is not of a fundamental nature to the Agreement as a whole, such provision shall be severed and the legality, validity and enforceability of the remainder of the Agreement (including the remainder of the provision which contains the relevant provision) shall not be affected. If, as a consequence of the foregoing, the accomplishment of the purpose of the Agreement is prevented, the parties shall immediately commence good faith negotiations to agree upon any lawful and reasonable changes to the Agreement that may be necessary to effect, as close as possible, the commercial intent of the Agreement.

14.9 Except as otherwise expressly provided herein, neither Party may transfer, assign, mortgage, encumber the Agreement or any of its rights or interests hereunder, nor declare a trust of such interests or delegate or sub-contract any obligation to be performed hereunder, without the prior written consent

of the other Party. Any attempted assignment, delegation or sub-contracting in contravention of this provision shall be null and void, and of no force or effect.

- 14.10 Each Party shall bear its own costs and expenses in connection with the negotiation, preparation and signature of the Agreement.
- 14.11 The Agreement may be entered into by the parties in any number of counterparts. Each counterpart shall, when executed and delivered, be regarded as an original, and all the counterparts shall together constitute one and the same instrument.

## **15. GOVERNING LAW AND JURISDICTION**

- 15.1 The Governing Law and Jurisdiction is dependent on where the Client is located.
- 15.2 If the Client is located outside of North America, any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claim) shall be governed by, and construed in accordance with, the laws of England and Wales and each Party irrevocably agrees to submit to the sole and exclusive jurisdiction of England and Wales.
- 15.3 If the Client is located within North America, any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claim) shall be governed by, and construed in accordance with, the domestic laws of the State of New York and each Party irrevocably agrees to submit any disputes and claims (including non-contractual) to the sole and exclusive jurisdiction of New York.