

SFP Digital Audit – Terms and Conditions – US (2023 v2)

BACKGROUND

- A. Sopra Banking Software Inc (“**Sopra**”) has developed computer software for asset-based inventory finance known as “SFP Digital Audit” which it makes available to subscribers via the internet as a subscription service.
- B. The Customer wishes to have access to and use of the Application as defined below, and specifically those modules of the Application referenced in the Order Form and Sopra has agreed to provide such access and use subject to the terms and conditions of this Agreement.

AGREED TERMS

1. Definitions and Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

“**Additional Services**” means all services, supplemental products or obligations not included within the Application that are requested by Customer from Sopra pursuant to Statement of Work.

“**Additional Services Policy**” means Sopra’s standard additional services policy as attached as “*Additional Services Policy*” to this Agreement.

“**Affiliate**” means in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time.

“**Aggregate Data**” means the aggregated anonymized data relating to Users’ use of the Application as collected and used by Sopra pursuant to Clause 4.8.

“**Application**” means Sopra’s digital auditing application known as SFP Digital Audit which provides the facilities described in the Application Overview. References to the Application in these Terms and Conditions are to such modules as specified in the Order Form.

“**Application Availability**” means the time interval during which the Application is available as defined in the Support Policy.

“**Application Overview**” means Sopra’s description of the Application and its functionality, attached as “*Application Overview*” to this Agreement. Sopra may amend the Application Overview with thirty (30) days’ written notice to Customer, which Customer’s agreement to the amendment to the Application Overview will not be unreasonably withheld.

“**Audit Results**” data from completed audits are synced to a web-based Dashboard Portal where they are processed to deliver audit results.

“**Authorized Location**” is a location designated by Customer that Customer has authorized as a location where the dealer may keep inventory.

“**Business Day**” means a day other than a Saturday or Sunday, or bank or public holiday.

“Business Rule(s)” the configuration within the Application of the Customer’s audit risk score parameters.

“Charges” means the charges due to Sopra for the Services, the Support Services and any Additional Services under this Agreement calculated at the rates referenced in the Charging Structure or as agreed in writing between the parties and the Implementation Services Fees.

“Charging Structure” means the statement of applicable charges for the provision of the Services, the Support Services and any Additional Services forming part of this Agreement and attached as “Charging Structure” to this Agreement.

“Confidential Information” means all confidential and proprietary information of a party disclosed to the other party, whether orally or in writing, that is either marked or designated as confidential or is identified in writing as confidential or proprietary or that a reasonable person would deem confidential or proprietary given the nature of the information and the circumstances under which it is disclosed, and including, either party’s trade secrets and know-how (including the concepts, techniques and ideas embodied in the Application and the structure, sequence and organization of the Application and the concepts, techniques, ideas and data embodied in Customer’s separate software, applications and programs that may be sending information to or receiving information from the Application). For clarity, all Customer Data and any personally identifiable information related to any Customer personnel or Customer’s customers are deemed to be Confidential Information of Customer.

“Contract Year” a period of twelve (12) months (or such shorter period if this agreement is terminated earlier), commencing on the Go Live Date and/or each anniversary of the Go Live Date.

“Control” means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and “controls” and “controlled” shall be construed accordingly.

“Customer” means the party to this Agreement who has signed the Order Form and agreed to take and pay for the Services.

“Customer Data” means data inputted into the information fields of the Application by Customer Agent Users, data received by the Application from Customer’s software, applications or programs, or data produced by Users through the Application as a result of processing data that has been input by Users. For the avoidance of doubt, Customer Data shall include, without limitation, all data generated or supplied by Customer Agent Users and Customer Dealer Users.

“Dashboard Portal” is a web-based portal that provides audit, Authorized Location and User management functionality. It is the repository of all Customer, asset, audit data, Business Rules and customer service logs related to the Application. The Dashboard is accessed by a web portal address.

“Data Processing Agreement” means the schedule of terms relating to the processing of personal data attached as the *“Data Processing Agreement”* to this Agreement.

“Go Live Date” means the date on which the Application ordered pursuant to the Order Form is first made available by Sopra for use by Customer.

“Implementation Services” means the configuration integration and related work referred to in clause 2.3, to be performed by Sopra to implement the Services.

“Implementation Services Fees” means the fees which shall become due and payable by the Customer to Sopra in respect of the Implementation Services in accordance with the provisions of this agreement, as such charges are set out in the Statement of Work.

“Incident” An unplanned interruption to the Application, or reduction in the quality of the Application being provided by Sopra.

“Initial Term” the period beginning Go Live Date and continuing for the period specified in the Order Form.

“Instance” means a single running copy of the Application and underlying database.

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

“Normal Business Hours” means the time interval during which the Application is available to Customer, defined for the region chosen in the Order Form within the Support Policy.

“Order Form” means the order form forming part of this Agreement signed by Sopra and the Customer.

“Problem” means an error or malfunction in the Application caused solely by Sopra that prevents or hinders Users from performing operations or functions expressly identified in the Application Overview.

“Risk Reports” Where there are occurrences in the audit results outside of defined Business Rule parameters, rule exceptions occur and reports are generated.

“Sales Tax” means value added tax or other sales tax applicable to the provision of the Application and Support Services.

“Scheduled Downtime” means the time that the Application is not available during Normal Business Hours due to notified maintenance of the Application.

“Services” means the subscription services provided by Sopra to pursuant to which Customer will have access to and use of the Application in accordance with this Agreement.

“Software Release” means any update made by Sopra to the Application.

“Statement of Work” means any statement of work be entered into between the Parties in relation to the Implementation Services or any Additional Service.

“Suggestions” means suggestions made by Customer or Users in relation to the Application.

“Support Policy” means Sopra’s standard support policy for the Application as attached as “Support Policy” to this Agreement (as may be amended from time to time) with (30) days’ written notice to Customer.

“Support Portal” means Sopra’s support portal for the reporting of Problems, log in details for which will be provided to the Customer.

“Support Services” means the support services to be provided by Sopra as set out in the Support Policy.

“Termination Period” means the period of notice specified in the Order Form on which each party can terminate this Agreement without cause.

“Territory of Use” means the geographical area in which the Application may be used as set out in the Order Form.

“Users” means all “Customer Agent Users” defined as users who are employees of Customer or third parties under contract with Customer that are authorized by Customer and approved by Sopra (which approval will not be unreasonably withheld) to access and use the Application on Customer’s behalf, and all “Customer Dealer Users” who will input information into Customer’s mobile application and such information will be transmitted to the Application.

- 1.2 This Agreement is comprised of the Terms and Conditions, Application Overview, Additional Services Policy, Support Policy, Charging Structure, Data Processing Agreement, the Order Form and any Statement of Work. In the event of any discrepancy between the Terms and Conditions and the Order Form, the Order Form shall prevail. This Agreement shall come into effect on signature of the Order Form by both parties.
- 1.3 Clause, schedule and paragraph headings and names of documents referenced in these Terms and Conditions shall not affect the interpretation of this Agreement.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, include the singular and a reference to one gender shall include a reference to other genders.
- 1.5 A reference to writing or written includes email to at least all email addresses included on the Order Form, if it is a basic operational communication. For any formal notices pursuant to Clause 13, email alone is insufficient.
- 1.6 References to clauses are to the clauses of this Agreement. References to paragraphs in documents referenced in these Terms and Conditions are to paragraphs of the relevant document.
- 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 this Agreement.
- 1.8 If there is an inconsistency between any provision in these Terms and Conditions and any documents expressly referenced within them, the provisions of the referenced document shall prevail.
- 1.9 References to times are to US times unless expressly provided otherwise.

2. Services for Customer

- 2.1 Subject to the terms of this Agreement, Sopra shall:
 - 2.1.1 provide the Services; and
 - 2.1.2 provide the Support Services.
- 2.2 The Application will be hosted using Amazon Web Services or an equivalent hosting service, the choice of which is at the sole discretion of Sopra (“Hosting

Provider”) subject to clause 15.

- 2.3 Sopra shall perform the Implementation Services in accordance with the Statement of Work. Sopra shall use reasonable endeavors to meet the performance dates set out in the Statement of Work, but any such dates shall be estimates based on the assumptions and dependencies set out on the Statement of Work, and time shall not be of the essence in this Agreement. Any changes to the Statement of Work shall be subject to agreement between the parties.
- 2.4 Sopra shall provide the Services and the Support Services with reasonable skill and care in accordance with the Service Levels set out in the Support Policy.
- 2.5 Sopra shall follow its archiving procedures for Customer Data as described in the Support Policy. In the event of any loss or damage to Customer Data, Sopra shall immediately notify Customer upon becoming aware of such loss or damage. Provided the loss or damage to Customer Data was not caused by Sopra’s gross negligence, willful misconduct, fraud, a data breach or a deliberate breach of this Agreement, Customer’s sole and exclusive remedy shall be for Sopra to use reasonable commercial endeavors to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Sopra in accordance with such archiving procedures.

3. Charges and Payment

- 3.1 In consideration of Sopra providing the Implementation Services, the Services and the Support Services Customer shall pay the Charges. Such Charges do not include Sales Tax which, if applicable, shall be payable by Customer.
- 3.2 Sopra shall invoice the Customer for:
 - 3.2.1 the Implementation Services Fees in accordance with the Statement of Work;
 - 3.2.2 the Services, the Support Services monthly in advance; and
 - 3.2.3 any Additional Services in accordance with the relevant Statement of Work.
- 3.3 Customer shall pay the Charges within 30 days of its receipt of each invoice issued by Sopra.
- 3.4 Without prejudice to its other rights and remedies, if Customer fails to pay an undisputed invoice in accordance with clause 3.3, and Customer fails to make payment in full within 30 days of receipt of written notice from Sopra, Sopra may delay or suspend the provision of the Services and / or the Support Services. Sopra shall resume provision of the Services and / or the Support Service promptly on receipt of payment of all sums due to Sopra from the Customer. Suspension under this clause 3.4 does not suspend any payment obligations incurred or falling due the period of suspension or extend the term of this Agreement.

4. Customer’s Obligations

- 4.1 Customer shall reasonably co-operate with Sopra in matters relevant to the provision of the Services and the Support Services by Sopra including but not limited to providing details of issues when requested, assisting in validating solutions when requested and to make available technical resources in situations in which an issue is likely to originate within systems owned by Customer. Customer shall on request provide to Sopra such information as Sopra may require from time to time in connection with the Support Services or Additional Services.
- 4.2 Customer is responsible for ensuring that all Users comply with the terms of this

Agreement and is responsible for all Charges arising in respect of such use.

4.3 Customer must:

- 4.3.1 use its best efforts to notify Sopra promptly of all changes to laws and regulations applicable to the Services, the Support Services and any Additional Services within the Territory of Use to the extent discovered by Customer;
- 4.3.2 instruct each User to keep a secure password for their access and use of the Application, and that each User keeps the password confidential and does not share such password with any other person;
- 4.3.3 ensure that Users meet the system requirements and pre-requisites for access to and use of the Application as notified to Customer from time to time by Sopra;
- 4.3.4 comply with all relevant policies of Sopra and that have been provided to Customer by Sopra from time to time, and in particular must not:
 - (a) through Users' use of the Application host, store, send, relay or process any material which breaches any applicable laws, regulations or legally binding codes, or infringes any third-party Intellectual Property Rights or other third-party rights, or which is pornographic, lewd or defamatory;
 - (b) use the Application in a manner that is unlawful or fraudulent or that may give rise to any form of legal action against Sopra or any third party; or
 - (c) use the Application to send or process any messages or communications which are offensive, abusive, indecent or obscene, are likely to cause annoyance, inconvenience or anxiety to another internet user, or constitute spam or bulk unsolicited mail;
- 4.3.5 comply with Customer's obligations in the Support Policy; and
- 4.3.6 not seek to access the Application in order to build a product or service which competes with the Application or assist third parties to do so.
- 4.4 Customer shall have the sole responsibility for the preparation of the Customer Data and accepts responsibility for any loss of Customer Data resulting from actions or inactions of any User.
- 4.5 Customer warrants that it has all necessary rights in respect of all data and information that is entered by the Customer, processed, or stored through the Application, including the Customer Data.
- 4.6 Each Party hereby agrees to work with the other Party to reach agreement on the content of any press releases, case studies and public announcements of significant project milestones, including but not limited to, the signing of this Agreement, the completion of the implementation phases and subsequent portfolio roll-outs. Neither Party will issue a press release, case study or public announcement referencing the other Party or related to this Agreement without the express, written approval of the other Party, which approval will not be unreasonably withheld or delayed.
- 4.7 Each Party hereby grants to the other Party, upon prior written consent in each instance, the right to use its name, or any trademark, service mark, trade name, logo or its other commercial or product designations. Notwithstanding the foregoing, the Parties, upon execution of this Agreement, hereby agree that Sopra

may use Customer's name and approved logo on Sopra's website and marketing materials to the extent Customer is being listed as a customer of Sopra.

- 4.8 Customer hereby grants to Sopra the right to collect and use on a perpetual and irrevocable basis Aggregated Data, including in the improvement of Sopra's services and in reports made available to Sopra's customers by Sopra (or third parties authorized by Sopra), whether on a paid or unpaid basis. Such data will not identify Customer or any User.
- 4.9 Customer acknowledges that:
 - 4.9.1 Sopra exerts (or will exert) significant effort and investment in obtaining, verifying, presenting, compiling, analyzing, enriching, and/or creating Aggregated Data;
 - 4.9.2 the aggregate data and all components thereof constitute proprietary information of value to Sopra that is not within the public domain;
 - 4.9.3 Sopra shall own all right, title and interest in and to all Intellectual Property Rights in the Aggregated Data and legal protections with respect thereto remain exclusively with Sopra, including, without limitation, any Suggestions, enhancement requests, feedback, or recommendations provided by Customer relating to the aggregate data; and
 - 4.9.4 Customer has and will have no proprietary rights whatsoever in or to the Aggregated Data.

5. Intellectual Property Rights

- 5.1 All Intellectual Property Rights in and to the Application, the related documentation and any other material provided by Sopra under this Agreement shall remain the property of Sopra. Customer's only rights shall be those rights to access and use the Application, the related documentation and other material as expressly set out in this Agreement.
- 5.2 Sopra undertakes at its own expense to defend Customer or, at its option, settle any claim or action brought against Customer alleging that the use of the Application in accordance with the terms of this Agreement infringes the Intellectual Property Rights of a third party ("Infringement Claim") and shall be responsible for any damages, reasonable costs (including legal fees) and expenses incurred by or awarded against Customer in connection with any such Infringement Claim. Sopra shall notify Customer immediately of any such Infringement Claim, including any demands made against Sopra regarding any such Infringement Claim. It is a condition of the indemnity in this clause 5.2 that:
 - 5.2.1 Sopra is given immediate and complete control of the defense and/or settlement of the Infringement Claim;
 - 5.2.2 Customer does not prejudice Sopra's defense or settlement of the Infringement Claim; and
 - 5.2.3 Customer gives Sopra all reasonable assistance with the defense and/or settlement of the Infringement Claim at Sopra's expense.
- 5.3 If an Infringement Claim is made or threatened then without prejudice to the rights and remedies of Customer under clause 5.2, Sopra may:
 - 5.3.1 procure the right for Customer to continue using those elements of the Application to which the Infringement Claim relates; or
 - 5.3.2 modify or replace those elements of the Application to which the

Infringement Claim relates in order to remove them from the scope of the Infringement Claim provided that:

- (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and function of the original item;
- (b) there is no additional cost to Customer; and
- (c) the terms of this Agreement shall apply to the modified or replaced items; or

5.3.3 terminate this Agreement immediately by written notice to Customer and refund any Charges paid in advance for any period falling after such termination.

- 5.4 Clause 5.2 and 5.3 represents Customer's exclusive remedy in respect of an Infringement Claim.
- 5.5 Subject to Sopra's rights to create Aggregated Data pursuant to clause 4.9, Sopra acknowledges that Sopra has no rights in the Customer Data.
- 5.6 Customer shall indemnify Sopra against any claim by a third party, and any damages awarded against Sopra and costs (including legal costs) incurred by Sopra pursuant to such claim, that Customer Data or other information belonging to Customer or a User, infringes any rights of that third party provided that Customer is given prompt and complete control of any such claim and that Sopra gives Customer, at Customer's cost, all reasonable assistance with such claim.

6. Confidentiality

- 6.1 Each party (as "Receiving Party") agrees that it shall not use, divulge or communicate to any person, other than its Affiliates and the Hosting Provider, without the express prior written consent of the other party (as "Disclosing Party") any Confidential Information of the Disclosing Party which may come to the Receiving Party's knowledge or possession.
- 6.2 The Receiving Party shall ensure that its employees, Affiliates, agents and sub-contractors are aware of the provisions of this clause 6 and the Receiving Party shall be responsible to the Disclosing Party in respect of any loss or damage which may be sustained or incurred by the Disclosing Party as a result of any breach of this clause 6 by the Receiving Party or any such persons.
- 6.3 The restrictions contained in this clause 6 shall not apply to any Confidential Information which:
 - 6.3.1 is or becomes generally available to the public other than as a result of a breach of this Agreement;
 - 6.3.2 the Receiving Party can demonstrate was in its possession prior to the time of disclosure to it by the Disclosing Party;
 - 6.3.3 was lawfully acquired from others who did not obtain it in circumstances which gave rise to any obligation of confidentiality (express or implied) owed to the Disclosing Party; or
 - 6.3.4 is required to be disclosed by law or applicable regulations, or the requirements of any recognized stock exchange.
- 6.4 The provisions of this clause 6 shall survive the termination of this Agreement.

7. Data Protection

- 7.1 Any processing of personal data under this Agreement shall be subject to the terms of the Data Processing Agreement.

8. Termination

- 8.1 This Agreement shall commence on the date specified on the Order Form, and subject to the remaining provisions of this clause 8, shall continue until terminated in accordance with its terms.
- 8.2 Either party may terminate this Agreement by providing written advance notice equivalent to the Termination Period, such notice to expire not before the end of the Initial Term.
- 8.3 Either party may terminate this Agreement immediately by written notice to the other party if:
- 8.3.1 the other party is in material breach of any of its obligations under this Agreement and where remediable fails to remedy such breach within 14 days of its receipt of written notice from the terminating party specifying the breach and requiring its remedy;
 - 8.3.2 an order is made or an effective resolution is passed for the winding up of the other party except for the purpose of solvent amalgamation or reconstruction;
 - 8.3.3 the other party is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - 8.3.4 the other party suffers in another jurisdiction applicable to it any action analogous to clauses 8.3.2 or 8.3.3.
- 8.4 On termination of this Agreement under this clause 8 or otherwise:
- 8.4.1 Sopra shall cease to provide the Services, the Support Services and any other services (including Additional Services) provided under this Agreement upon the effective date of the termination;
 - 8.4.2 Customer shall cease to be liable to pay Charges except for any sums that have accrued up to the effective date of the termination; and
 - 8.4.3 each party shall return to the other party all data, documentation, materials and equipment belonging to the other party and in addition and subject to any obligations under the Data Processing Agreement Sopra shall return to Customer all Customer Data stored through the Application.
- 8.5 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination of this Agreement. Any provision of this Agreement that expressly or by implication is intended to come into or continue in force or after termination of this Agreement shall remain in full force and effect.
- 8.6 Termination of this Agreement shall not affect the continuance in force of any other agreement in force between the parties that is the subject of these Terms and Conditions, or the continuance of any agreement in force between Sopra and any Affiliate of Customer that is the subject of these Terms and Conditions.

9. Limitation of Liability

- 9.1 This clause 9 sets out the entire financial liability of Sopra (including any liability for

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- the acts or omissions of its employees, agents and sub-contractors) to Customer:
- 9.1.1 arising under or in connection with this Agreement;
 - 9.1.2 in respect of any use made by Customer of the Application, the Support Services and any Additional Services, or any part of them; and
 - 9.1.3 in respect of any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 9.2 Nothing in this Agreement limits or excludes the liability of either party for:
- 9.2.1 death or personal injury caused by its negligence;
 - 9.2.2 fraud or fraudulent misrepresentations;
 - 9.2.3 deliberate breach of this Agreement; or
 - 9.2.4 any liability that cannot be lawfully limited or excluded under applicable law.
- 9.3 Except as expressly and specifically provided in this Agreement:
- 9.3.1 Customer assumes sole responsibility for results obtained from the use of the Application by Customer, and for conclusions drawn from such use. Sopra shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Sopra by Customer in connection with the Support Services or Additional Services, or any actions taken by Sopra at Customer's direction; and
 - 9.3.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.
- 9.4 Subject to clause 9.2:
- 9.4.1 Sopra shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent), 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 or in connection with this Agreement; and
 - 9.4.2 Sopra's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising under this Agreement or in connection with the performance or contemplated performance of this Agreement in any Contract Year shall be limited to the greater of:
 - (a) USD 20,000;
 - (b) Charges paid in the previous Contract Year.

10. Force Majeure

- 10.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement (other than payment obligations) if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Sopra or any other party), pandemic, 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. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 14 days, the party not affected may terminate this Agreement by giving 14 days' written notice to the other party.

11. Assignment

- 11.1 Customer shall not, without the prior written consent of Sopra, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 11.2 Sopra may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

12. Third Party Rights

- 12.1 The parties agree that save as expressly stated this Agreement shall not create any rights for any third party and that the provision of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

13. Notices

- 13.1 Any notice or other document required to be given under this Agreement or any communication between the parties with respect to any of the provisions of this Agreement shall be in writing in English and be deemed duly given if signed (or, in the case of email, if sent) by or on behalf of a duly authorized officer of the party giving the notice and if left at or sent by first class mail or by email to the address of the party receiving such notice given in the Order Form or as notified between the parties for the purpose of this clause 13.
- 13.2 Any such notice or other communication shall be deemed to be given to and received by the addressee:
 - 13.2.1 at the time the same is left at the address of or handed to a representative of the party to be served;
 - 13.2.2 by post on the date not being a Sunday or public holiday two days following the date of posting; and
 - 13.2.3 if sent by email, at 9.00am on the next Business Day and provided that if any email produces an automated response reporting a failure to deliver, delayed delivery to the intended recipient or "out of office" reply, such email shall be deemed not to have been received by the addressee.
- 13.3 In proving the giving of a notice it shall be sufficient to prove that the notice was left or that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication was addressed and dispatched and dispatch of the transmission did not produce an automated response of the nature referenced in clause 13.2.3.

14. Entire Agreement

- 14.1 This Agreement contains the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter. No terms and

conditions proposed by Customer shall apply to this Agreement unless expressly agreed otherwise in writing by Sopra.

15. Modifications

- 15.1 Subject to 15.3, Sopra may modify the Services, the Support Services or any Additional Services (other than the Charges which are subject to increase as referenced in the Charging Structure) provided that Sopra will provide at least 90 days' advance notice of any such changes which are material and remove or alter functionality ("Material Change Notice"). Changes specified in the Material Change Notice will take effect upon expiry of the period specified in the Material Change Notice (the "Material Change Notice Period"), provided that if the Customer reasonably considers that the changes specified in the Material Change Notice will have a material adverse effect on the Services, the Support Services or any Additional Services the Customer may within 90 days of receipt of the Material Change Notice give notice to Sopra terminating this Agreement on expiry of the Material Change Notice Period. By continuing to use the Application after the effective date of any such modifications, Customer agrees to be bound by the modified terms.
- 15.2 In exercising its rights under clause 15.1, Sopra shall not act unreasonably.
- 15.3 Variations to the terms of the Terms and Conditions or the Order Form shall require the express written approval of both parties.

16. Suspension of access

- 16.1 Without prejudice to its other rights and remedies, Sopra may suspend access to and use of the Application immediately on written notice if any User's use of the Application:
- 16.1.1 poses a security risk to any third party or the systems of the Hosting Provider or Sopra;
 - 16.1.2 is in breach of this Agreement;
 - 16.1.3 may expose Sopra or the Hosting Provider to any liability; or
 - 16.1.4 may be fraudulent.
- 16.2 Suspension in accordance with this clause 16.1 does not affect Customer's liability for Charges incurred or falling due after such date or extend the term of this Agreement.
- 16.3 Any suspension under this clause 16 shall be revoked and access to the Application immediately restored when Customer resolves the concern.

17. No partnership or agency

- 17.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorize any party to make or enter into any commitments for or on behalf of any other party.

18. Waiver

- 18.1 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

18.2 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

19. Severance

19.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

19.2 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.

20. Law and Jurisdiction

20.1 The law governing any disputes or claims arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims) and its construction, and the choice of jurisdiction in respect of any disputes, are as specified in the Order Form.