

Terms and Conditions for the Pepper Purchase Agreement

PepperHQ Ltd
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PARTIES

- (1) PepperHQ Limited, a company incorporated and registered in England and Wales with company number 08695071 whose registered office is at 101 The Metal Box Factory, 30 Great Guildford Street, London, SE1 0HS (**Pepper**); and
- (2) The purchasing merchant as named in the purchase agreement (**Customer**).

BACKGROUND

- (A) Pepper has developed a platform and mobile solution to provide a merchant branded white-label mobile application for Customers to create an in-store mobile experience for their End Users in relation to mobile ordering, payments and loyalty programmes.
- (B) The Customer wishes to purchase and use Pepper's Services in its business operations.
- (C) Pepper has agreed to provide, and the Customer has agreed to subscribe to and pay for Pepper's Services subject to the terms and conditions of this agreement.

AGREED TERMS

1. INTERPRETATION

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

Account	an account enabling the Customer or any Authorised User to access and use the Services;
Active Customer Locations	the locations marked in the pepper platform as 'Active', which are visible to users of a client app consuming pepper's services
Authorised Users	those employees, agents and independent contractors at the Customer Locations in respect of which the Customer has subscribed to use the Services and the Documentation;
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
Change of Control	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly;
Confidential Information	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in Clause 9.6 or Clause 9.7;
Customer Data	all data uploaded to or stored on the Platform by the Customer, its own customers (End Users) or Authorised Users; transmitted by the Platform at the instigation of the Customer; supplied by the Customer or End User to Pepper for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of using the Services or facilitating the Customer's use of the Services;
Customer Locations	the venues which are the subject of the Customer's Subscription as set out in the purchase agreement;

Data Controller	has the meaning given to it in the Data Protection Act 2018;
Data Processor	has the meaning given to it in the Data Protection Act 2018;
Documentation	the documentation for the Services made available to the Customer by Pepper which sets out a description of the Services and the user instructions for the Services;
Effective Date	the date of this agreement;
End User	The users of a pepper powered app; customers of the Customer
Initial Subscription Term	the initial term of this agreement which shall be specified in the Purchase Agreement;
Intellectual Property Rights	means all patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, 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;
Mobile App	the white label mobile application created by Pepper for the Customer which is available to End Users through the Google Play Store and the Apple App Store;
Normal Business Hours	9.00 am to 5.00 pm local UK time, each Business Day;
Personal Data	has the meaning given to it in the Data Protection Act 2018;
Platform	means the platform managed by Pepper and used by Pepper to provide the Services to the Customer, including the Software used to provide the Services, and the computer hardware on which that application and Software is installed;
Processing and process	have the meaning set out in s.1(1) of the Data Protection Act 2018;
Purchase Agreement	the breakdown of costs and included products and services
Renewal Period	the period described in Clause 13.1;
Services	the subscription services provided by Pepper to the Customer under this agreement, as more particularly described in the purchase agreement;
Set-up and Build Fees	the set-up fees payable by the Customer for the Test Phase as set out in the purchase agreement;

Software	the online software applications provided by Pepper as part of the Services including the application and database software and the system and server software;
Subscription Fees	the subscription fees payable by the Customer to Pepper for the User Subscriptions, as set out in the purchase agreement;
Subscription Term	has the meaning given in Clause 13.1 (being the Initial Subscription Term together with any subsequent Renewal Periods);
Support Services	support in relation to the use of, and the identification and resolution of errors in, the Services, but excluding the provision of training services;
Support Services Policy	Pepper's policy for providing the Support Services as set out in Appendix 1 and as may be notified to the Customer from time to time;
Subscriptions	the subscriptions purchased by the Customer pursuant to Clause 7.1 which entitle Authorised Users to access and use the Services and the Documentation at Customer Locations in accordance with this agreement;
Test Phase	the initial set-up and testing of the Platform as set out in the purchase agreement; and as set out in the purchase 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	A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
1.3	A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
1.4	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 and shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
1.5	A reference to writing or written does not include e-mail.
1.6	References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.
2.	SUBSCRIPTION
2.1	Subject to the Customer purchasing the Subscription in accordance with Clause 2.2 and Clause 7.1, the restrictions set out in this Clause 2 and the other terms and conditions of this agreement,

Pepper hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to use the Services and the Documentation during the Subscription Term solely for the Customer's business operations.

2.2 The Customer undertakes that:

- 2.2.1 any changes that the customer initiates to the product or services set out in the purchase agreement will be chargeable at Pepper's prevailing rate in the absence of any other agreement from Pepper.
- 2.2.2 that removal of locations below the number of locations covered by the subscription will be considered a Termination and will be subject to the terms in Clause 13

2.3 The Customer shall not:

- 2.3.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any part of the Software and/or Documentation;
- 2.3.2 attempt to de-compile, reverse compile, disassemble, reverse engineer all or any part of the Software;
- 2.3.3 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;
- 2.3.4 use the Services and/or Documentation to provide services to third parties;
- 2.3.5 subject to Clause 21.1, license, 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 the Authorised Users, or
- 2.3.6 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this Clause 2.

2.4 The Customer 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 Pepper.

2.5 From time to time, Pepper will add to the services available by way of developing new software features, or by adding to the service provision covered by the SLA. Some additional services may require an additional, chargeable subscription, which will be added to the subscription described in this clause 2. Pepper may also choose to waive these fees and/or to also charge a one off fee to facilitate accelerated development of features.

2.6 The rights provided under this Clause 2. are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.

3. SERVICES

3.1 Pepper shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.

3.2 Pepper will, as part of the Services and at no additional cost to the Customer, provide the Customer with Pepper's Support Services during Normal Business Hours in accordance with Pepper's Support

Services Policy in effect at the time that the Services are provided. Pepper may amend the Support Services Policy in its sole and absolute discretion from time to time.

4. CUSTOMER DATA

- 4.1 The Customer shall own all right, title and interest in and to all of Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of Customer Data.
- 4.2 The Customer shall ensure that each End User is served with an appropriate privacy notice in relation to the processing of the End User's personal data by the Mobile App or otherwise in the Services.
- 4.3 If Pepper processes any Personal Data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and Pepper shall be a data processor and in any such case:
 - 4.3.1 the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and Pepper's other obligations under this agreement;
 - 4.3.2 the Customer shall ensure that Customer is entitled to transfer the relevant personal data to Pepper so that Pepper may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf;
 - 4.3.3 the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
 - 4.3.4 Pepper will use Amazon Web Services (**AWS**), compose.io and elastic.co as sub-processors for its data hosting and processing activities;
 - 4.3.5 when changing sub-processors that are used for data hosting and processing activities, Pepper will notify merchants through update of these terms
 - 4.3.6 Pepper shall not transfer the Customer's Personal Data out of the European Economic Area (**EEA**) without the Customer's prior consent
 - 4.3.7 Pepper shall process the personal data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the Customer from time to time; and
 - 4.3.8 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

5. PEPPER'S OBLIGATIONS

- 5.1 Pepper undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 5.2 The undertaking at Clause 5.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Pepper's instructions, or modification or alteration of the Services by any party other than Pepper or Pepper's duly authorised contractors or agents.

- 5.3 If the Services do not conform with the foregoing undertaking, Pepper will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in Clause 5.1. Notwithstanding the foregoing, Pepper:
- 5.3.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by Customer through the Services will meet the Customer's requirements; and
- 5.3.2 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 Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 5.4 This agreement shall not prevent Pepper 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 this agreement.
- 5.5 Pepper warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

6. CUSTOMER'S OBLIGATIONS

The Customer shall:

- 6.1 provide Pepper with:
- 6.1.1 all necessary co-operation in relation to this agreement; and
- 6.1.2 all necessary access to such information as may be required by Pepper;
- in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- 6.2 implement operational and marketing changes necessary for launch and ongoing success of the Pepper powered app.
- 6.3 comply with all applicable laws and regulations with respect to its activities under this agreement;
- 6.4 carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Pepper may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 6.5 ensure that the Authorised Users at the Customer Locations use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- 6.6 obtain and shall maintain all necessary licences, consents, and permissions necessary for Pepper, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;

- 6.7 ensure that each End User is presented with an End User licence agreement in a form approved by Pepper upon access the Mobile App for the first time and has to accept such End User licence agreement before being able to use the Mobile App.
- 6.8 ensure that its network and systems comply with the relevant specifications provided by Pepper from time to time; and
- 6.9 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Pepper's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

7. CHARGES AND PAYMENT

- 7.1 The Customer shall pay any fees to Pepper for the Services in accordance with this Clause 7 and as set out in the purchase agreement.
- 7.2 The fees payable by the Customer as set out in the purchase agreement do not include any third-party costs which may be associated with the ongoing delivery of the Services, including but not limited to, payment gateway costs.
- 7.3 The Customer shall provide to Pepper a payment method acceptable to Pepper and any other relevant valid, up-to-date and complete contact and billing details.
- 7.4 Following receipt of an approved purchase agreement, Pepper shall take payment using the provided payment method periodically as set out in the purchase agreement.
- 7.5 Pepper shall continue to take payment for all subsequent Subscription Fees using the payment method provided under Clause 7.3. on the first day of the month.
- 7.6 If Pepper has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Pepper:
 - 7.6.1 Pepper may, without liability to the Customer, disable the Customer's password, Account and access to all or part of the Services and Pepper shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - 7.6.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 7.7 All amounts and fees stated or referred to in this agreement:
 - 7.7.1 are, subject to Clause 12.3.2, non-cancellable and non-refundable;
 - 7.7.2 are exclusive of value added tax, which shall be added to Pepper's invoice(s) at the appropriate rate.
- 7.8 Pepper shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional Customer Locations purchased pursuant to Clause 2 at the start of each Renewal Period upon 90 days' prior notice to the Customer and prices as set out in the purchase agreement shall be deemed to have been amended accordingly.

8. PROPRIETARY RIGHTS

- 8.1 The Customer acknowledges and agrees that Pepper and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 8.2 Pepper 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 this agreement.

9. CONFIDENTIALITY

- 9.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- 9.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
 - 9.1.2 was in the other party's lawful possession before the disclosure;
 - 9.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - 9.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.
- 9.2 Subject to Clause 9.1.4, 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 this agreement.
- 9.3 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 this agreement.
- 9.4 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 9.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 9.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 9.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Pepper's Confidential Information.
- 9.7 Pepper acknowledges that Customer Data is the Confidential Information of the Customer.
- 9.8 No party shall make, or permit any person to make, any public announcement concerning this 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.

9.9 The above provisions of this Clause 9 shall survive termination of this agreement, however arising.

10. DATA PROTECTION

10.1 The Customer warrants to Pepper that it has the legal right to disclose all Personal Data that it does in fact disclose to Pepper under or in connection with this agreement, and that the processing of that Personal Data by Pepper in accordance with this agreement will not breach any data protection or privacy laws.

10.2 The Customer and Pepper acknowledge that for the purposes of the Data Protection Act 2018 and the European GDPR, the Customer is the Data Controller and Pepper is the Data Processor in respect of any Personal Data.

10.3 The Customer authorises Pepper to use any Personal Data it processes under this agreement on an aggregate and anonymised basis to:

10.3.1 improve and develop the Services;

10.3.2 inform the Customer of any trends (if included in the Services Specification); and

10.3.3 to provide information on product trends to interested third parties.

10.4 To the extent that Pepper processes Personal Data disclosed by the Customer, Pepper warrants that:

10.4.1 it shall process the Personal Data only in accordance with the Customer's lawful instructions from time to time and shall not process the Personal Data for any purposes other than those purposes expressly set out in this agreement or authorised by the Customer.

10.4.2 taking into account the state of the art, costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, it has in place appropriate security measures (both technical and organisations) against unlawful or unauthorised processing of that Personal Data and against loss or corruption of that Personal Data,

10.4.3 it shall make employees responsible for managing the processing of data subject to a duty of confidence

10.4.4 it shall provide a reasonable facility, either through support requests, or as a self-service facility through the pepper console available to the Customer, the ability for the end users to exercise their rights as a data subject under the GDPR

10.4.5 it shall inform the customer to any changes to the security of processing and data protection impact assessments.

10.4.6 It shall, without undue delay, inform the Customer of any personal data breaches and support the customer in the notification of End Users.

10.5 The Customer and Pepper both warrant that they will comply with all obligations under any data protection and privacy laws.

- 10.6 Subject to Clause 10.1-10.4, for the duration of the Customer Subscription and for a period no longer than 12 months after the end of the Termination period, Pepper will store and process the Personal Data of End Users on the Customer's behalf. This Personal Data includes, but is not limited to:
- 10.6.1 full name; email address; Facebook ID; phone number; date of birth; order and in app activity history
- 10.7 In the event of termination, Pepper will make all personal data available to the Customer at the end of the subscription period and will delete personal data stored on that Customers behalf, subject to Clause 10.6
- 10.8 Pepper may, on the Customer's instruction, implement rules which use customer data and behavioural analytics to profile customers and to organise customers in to cohorts based on this
- 11. INDEMNITY**
- 11.1 The Customer shall defend, indemnify and hold harmless Pepper 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 Customer's use of the Services and/or Documentation, provided that:
- 11.1.1 the Customer is given prompt notice of any such claim;
- 11.1.2 Pepper provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- 11.1.3 the Customer is given sole authority to defend or settle the claim.
- 11.2 Pepper shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- 11.2.1 Pepper is given prompt notice of any such claim;
- 11.2.2 the Customer provides reasonable co-operation to Pepper in the defence and settlement of such claim, at Pepper's expense; and
- 11.2.3 Pepper is given sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of any claim, Pepper may procure the right for the Customer 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 this agreement on 7 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 11.4 In no event shall Pepper, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 11.4.1 a modification of the Services or Documentation by anyone other than Pepper; or
- 11.4.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to Customer by Pepper; or

- 11.4.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Pepper or any appropriate authority.
- 11.5 The foregoing and Clause 12.3.2 states the Customer's sole and exclusive rights and remedies, and Pepper's (including Pepper'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 this agreement:
- 12.1.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer. Pepper shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Pepper by Customer in connection with the Services, or any actions taken by Pepper at the Customer's direction;
- 12.1.2 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.
- 12.2 Nothing in this agreement excludes the liability of Pepper:
- 12.2.1 for death or personal injury caused by Pepper's negligence;
- 12.2.2 for fraud or fraudulent misrepresentation; or
- 12.2.3 any other liability which cannot be excluded by law.
- 12.3 Subject to Clause 12.1 and Clause 12.2:
- 12.3.1 Pepper 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 this agreement; and
- 12.3.2 Pepper's total aggregate liability in contract (including in respect of the indemnity at Clause 11.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to fifty per cent of the total Subscription Fees paid during the 12 months immediately preceding the date on which the claim arose.
13. **TERM AND TERMINATION**
- 13.1 This agreement shall, unless otherwise terminated as provided in this Clause 13, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

13.1.1 the Customer provides Pepper with at least 6 months' notice that it wishes to terminate the agreement at the end of the Initial Subscription Term of a Renewal Period; or

13.1.2 otherwise terminated in accordance with the provisions of this agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.

13.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

13.2.1 the other party fails to pay any amount due under this 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;

13.2.2 the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

13.2.3 the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

13.2.4 the other party 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;

13.2.5 the other party 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 that other party with one or more other companies or the solvent reconstruction of that other party;

13.2.6 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 that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

13.2.7 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 other party;

13.2.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

13.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

13.2.10 a creditor or encumbrancer of the other party 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 other party's assets and such attachment or process is not discharged within 14 days;

- 13.2.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 13.2.4 to Clause 13.2.10 (inclusive);
 - 13.2.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - 13.2.13 there is a change of control of the other party.
- 13.3 On termination of this agreement for any reason:
- 13.3.1 all licences granted under this agreement shall immediately terminate and Customer shall immediately cease all use of the Services and/or the Documentation;
 - 13.3.2 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; and
 - 13.3.3 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**
- Pepper shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this 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 Pepper 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 Customer 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 this agreement and the Purchase Agreement, the provisions in the main body of this agreement shall prevail.
16. **VARIATION**
- No variation of this 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 this 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 this agreement, the rights and remedies provided under this 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 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. ENTIRE AGREEMENT

20.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes 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 this 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 this 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 this agreement.

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

21. ASSIGNMENT

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

21.2 Pepper 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.

22. NO PARTNERSHIP OR AGENCY

Nothing in this 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

This agreement does not confer any rights on any person or party (other than the parties to this 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 this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address as set out in this agreement.

24.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax 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

This 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 this agreement or its subject matter or formation (including non-contractual disputes or claims).