Managed Hosting: Terms of Service

Last Modified: 2 December 2013

1. Introduction

1.1 These terms and conditions form part of the Agreement (defined below) between Client and Dimension Data. The Agreement governs Dimension Data’s provision and Client’s use of the Services. When Dimension Data accepts an Order a contract between Dimension Data and Client is formed. The terms and conditions of that contract are made up from the various documents that comprise the Agreement.

2. Definitions

2.1 Capitalised terms used in these Terms and not otherwise defined have the following meanings:

**Agreement** means the agreement between Client and Dimension Data and comprises:

- **these Terms.** The Terms are mainly provisions of a legal nature.
- **all applicable Orders.** Each Order sets out Service specific information including volumes and charges.
- **Third Party Software Terms.** The Services may include software components licensed to Dimension Data by other companies and these companies require certain terms and conditions to be included in the Agreement.
- **the AUP.** The Acceptable Use Policy prohibits certain types of activity e.g. hacking and spamming, and sets out general rules that apply to use of the Services.
- **the Usage Pricing Terms.** Prices and charges for the Services.
- **Service Description.** This document describes the features and functions of the Services.
- **Service Level Terms.** The performance and other metrics applicable to the Services.

**Administrator** means the single employee, agent or independent contractor authorised by Client, to provision, manage and administer the Services.

**API** means an application programming interface made available by Dimension Data in connection with certain Services, including the technical and administrative specifications, standards, requirements, procedures and communication protocols promulgated by Dimension Data in connection with such application programming interface.

**AUP** means the Acceptable Use Policy that describes rights and obligations for use of the Services, located at http://cloud.dimensiondata.com/saas-solutions/about/legal/acceptable-use-policy.

**Authorised User** means the Administrator or a Sub-Administrator, as applicable.

**Client** means the entity ordering Services from Dimension Data, as identified in the applicable Order(s).

**Client Application** means software that the Client installs on the Services for use by the Client and third parties authorised by Client including customers and other end-users.

**Client Content** means the Client Applications and any other content, materials or data that Client uses, installs, uploads or hosts on the Services.

**Confidential Information** has the meaning given in Section 9.
Credentials mean a unique login and password for Authorised Users to access and use the Services.

Dimension Data means the Dimension Data entity (identified in the applicable Order) providing Services to Client.

Documentation means the developer guides, getting started guides, user guides, quick reference guides, and other documentation for the Services that Dimension Data provides to Client in the Welcome Pack or makes available via one or more web-based user interfaces.

Effective Date of an Order means the date that Dimension Data accepts the Order under Section 3.

Excusing Event has the meaning given in the Service Level Terms.

Fees mean the fees payable by Client to Dimension Data for the Services, as described in Section 12 and the applicable Order.

Geography means a geographic region in which Data maintains one or more Locations. The Geographies for a Service are set out in the applicable Service Description.

Incident has the meaning given in the Service Level Terms.

Location means a physical location from which Dimension Data provides Services or in which Dimension Data maintains an MCP necessary to provide the Services.

Management Portal means a portal used by Authorised Users to allow Client to manage and administer certain Services on its own. Where applicable the URL for the Management Portal will be included in the Welcome Pack.

MCP means a managed cloud platform used by Dimension Data to provide Services to Client. An MCP consists of computing hardware and software resources including Dimension Data's automation and orchestration tools.

Minimum Commitment Plan means a Plan that includes a Minimum Commitment Term.

Minimum Commitment Term means a number of consecutive months for which Client commits to pay a minimum Fee to access and use Services, as indicated in the applicable Order.

Minimum Usage Commitment means the minimum Fee which Client commits to pay each month during the Minimum Commitment Term.

Optional Services means those optional services described in the Service Description for Optional Services ("SDOS") located at http://cloud.dimensiondata.com/saas-solutions/about/legal/optional-services-service-descriptions.

Order means an order for Services submitted by Client and accepted by Dimension Data.

Plan means a plan for Dimension Data’s provision of, and Client’s payment for, Services, as described in the applicable Order.

Public Software means open source software as that term is defined by the Open Source Initiative. Public Software includes software distributed under the GNU General Public License, GNU Lesser General Public License, Apache License, Mozilla Public License, BSD License, MIT License, Common Public License, or derivatives or similar licences.

Services means the services (including any Optional Services) indicated in the applicable Order, in each case, provided by Dimension Data to Client as more fully described in the applicable Service Description(s).

Service Commencement Date means the time indicated in the applicable Order from when Dimension Data will commence providing the Services being either: (i) a calendar date; or (ii) the occurrence of an event or
completion of a milestone. Client is deemed to have access to the Services when Dimension Data sends to Client via email the Welcome Pack containing Credentials.

**Service Description** means the document setting out the features, functions, limitations and restrictions applicable to the Services.

**Service Levels** mean the service levels for a particular Service as set out in the document (the “**Service Level Terms**”) identified in the applicable Order.

**Software** means the software (including the API) that Dimension Data makes available for Client’s use as part of the Services, including both Dimension Data’s software and Third Party Software.

**Sub-Administrator** means an employee, agent, independent contractor or automated application account of Client whom the Administrator authorises to access and use the Services.

**Terms** means the terms and conditions in this document.


**Usage** means Client’s monthly usage of Services, as measured in units of the currency set out in the applicable Order and as further described at [http://cloud.dimensiondata.com/saas-solutions/services/public-cloud/pricing](http://cloud.dimensiondata.com/saas-solutions/services/public-cloud/pricing) (the “**Usage Pricing Terms**”).

**Usage-Based Plan** means a Plan under which Client pays for Services based on Client’s Usage.

**User(s)** has the meaning given in the Acceptable Use Policy.

**Welcome Pack** means the materials including Administrator’s Credentials and access instructions that Dimension Data provides to Client to allow Client to access the Services.

3. **Orders**

**Ordering Services**

3.1 Client may order Services and Optional Services by submitting Orders. Orders may be submitted online, in electronic or paper documents but in all cases must include the applicable Fees and otherwise be in a form approved by Dimension Data.

**Ordering Optional Services**

3.2 Dimension Data’s provision of an Optional Service is subject to the availability of and Dimension Data’s ability to provide the applicable Optional Service and Dimension Data may reject an Order for Optional Services for any reason. Optional Services may also be subject to additional Fees, including Set-Up Fees, Monthly Fees, Shared Usage Fees and other Optional Service Fees, or Minimum Commitment Terms, as indicated in the SDOS or elsewhere.

**Acceptance of Orders**

3.3 An Order is only binding on Dimension Data once accepted as follows:

(a) in the case of Client’s first Order for Services, the earlier of when Dimension Data: (i) countersigns the Order; and (ii) sends to Client via email the Welcome Pack containing Credentials; and

(b) in the case of subsequent Orders for Services and Orders for Optional Services, the earlier of when Dimension Data: (i) sends to Client an email confirming acceptance of the Order; (ii) countersigns the Order; and (iii) commences performing the applicable Services or Optional Services.
Selecting Locations and Geographies

3.4 Client will access all Services through, and store all Client Content in, the Location and Geography designated in the Order.

3.5 Locations and Geographies may be changed as follows: (i) for Services allowing a change of Location within Geography via the Management Portal, Client may request such change(s) via the Management Portal; or (ii) in other cases, Client must request access to a different Location or Geography in writing to Dimension Data, and if Dimension Data approves such request, a new Order will be agreed and the Location(s) available in such new Geography will thereafter be accessible to Client.

3.6 Client acknowledges that the addition of any Locations may affect the calculation of Client’s Usage, Fees and Service Level Credits.

Commencement of Services

3.7 Following acceptance of an Order Dimension Data will perform the Services from the Services Commencement Date.

4. License

Grant of License

4.1 Subject to: (i) Client’s payment of all Fees; and (ii) the other terms and conditions of the Agreement, Dimension Data grants to Client a limited, non-exclusive, non-transferable, non-sublicensable right and license during the term of each applicable Order for Client to access and use the Services as described in the applicable Service Description(s). This license includes the right to use the Documentation and APIs in connection with the Services.

Restrictions

4.2 Except as expressly permitted by the Agreement, Client will not and will ensure that Users do not:

(a) reproduce, download, frame, mirror, or create derivative works from the Services;

(b) decompile, disassemble, or otherwise reverse engineer any Services;

(c) access or use any Services in order to build any competing product or service;

(d) license, sub-license, sell, rent, lease, transfer, assign, distribute, disclose, or otherwise make available any Services to any third party, or use any Services on a service bureau basis;

(e) access or use any Services in breach of the AUP or any law or regulation, including anti-spam laws and regulations;

(f) remove, obscure or alter any trademarks, brand names, or other proprietary notices appearing on or contained within any Services;

(g) use or access any Services other than as expressly permitted by the Agreement.

API

4.3 Authorised Users may access the Services either through a web-based user interface or through Client’s own Client Application using the API. Dimension Data may modify and republish the API from time to time and Client will need to ensure that its Client Applications and systems are compatible with the then-current API. Notwithstanding the foregoing, if Dimension Data removes or changes a material feature or function of the API, Dimension Data will use commercially reasonable efforts to maintain backwards compatibility with the previous version of the API for twelve (12) months from the date of the change.

Third Party Software
4.4 The Services may include Third Party Software in which case the Third Party Software Terms will apply. If there is any conflict or inconsistency between the Third Party Software Terms and the other documents comprising this Agreement with respect to Third Party Software then the Third Party Software Terms will prevail to the extent of the conflict or inconsistency.

No Other Rights

4.5 As between the parties, Dimension Data is the sole and exclusive owner of all right, title and interest (including intellectual property rights) in and to the Services. Subject only to the specific licenses granted in this Agreement, Client will not acquire or claim any right, title or interest (including intellectual property rights) in or to the Services, whether by implication, operation of law or otherwise.

5. Client Applications

5.1 Client may install and host Client Applications on the Services. Client is solely responsible for: (i) ensuring that Client has the necessary rights, permissions and licences to install and host the Client Applications on the Services; (ii) the acts and omissions of any users of the Client Applications; (iii) the functionality and operation of the Client Applications; and (iv) the support and maintenance arrangements for the Client Applications.

5.2 As between the parties, Client is the sole and exclusive owner of all right, title and interest (including intellectual property rights) in and to the Client Applications and other Client Content. Client grants to Dimension Data a limited, non-exclusive, non-transferable, non-sublicenseable right and license during the term of each applicable Order to host the Client Applications and other Client Content solely in connection with providing the Services and performing its other obligations under the Agreement.

6. Authorised User Accounts

Administrators

6.1 In its first applicable Order for Services Client will designate one (1) Administrator. The Administrator is authorized by Client to provision Services, order additional Services, manage Client’s use of Services and appoint Sub-Administrators. Client may also automate the provisioning, ordering and management of Services through the API. Any and all actions, requests and orders made using an Administrator’s Credentials or through the API will be deemed to have been authorised by Client and Client will be responsible for the associated Fees.

Sub-Administrators

6.2 The Administrator may designate one or more Sub-Administrators and allocate to them Credentials. Sub-Administrators may perform all acts of the Administrator other than appointing Sub-Administrators. Appointment of Sub-Administrators may constitute additional Usage and be subject to additional Fees as described in the Usage Pricing Terms.

Client Responsibility

6.3 Client is responsible for: (i) maintaining the confidentiality of Credentials and ensuring that Credentials are only used by Authorised Users; and (ii) the acts and omissions of Authorized Users and any person using Client’s Credentials. Client will notify Dimension Data promptly in writing if Client becomes aware of: (i) any loss, theft, or unauthorised use of any Credentials; or (ii) any breach of this Agreement by an Authorised User.

7. Service Levels and Maintenance

Service Levels

7.1 The Service Levels are in the Service Level Terms. Client will be entitled to Service Level Credits as set out in the Service Level Terms and Section 12.4. Failure to meet Service Levels is not a breach of the Agreement by Dimension Data and Service Level Credits are Client’s sole and exclusive remedy and Dimension Data’s sole and exclusive liability for Dimension Data’s failure to meet the Service Levels.
Maintenance

7.2 Dimension Data performs scheduled maintenance on the Services including maintenance related to the Software, MCP and other equipment and materials used for providing the Services. Occasionally Dimension Data may need to perform emergency or unscheduled maintenance. Maintenance activities may cause interruptions to the Services although Dimension Data will use reasonable efforts to inform Client in advance of any maintenance related Service interruptions and their likely duration.

8. Support

Dimension Data Community

8.1 Dimension Data will provide Client with access to Dimension Data’s online community forum, located at http://www.dimensiondata.com/Services/CloudServices/Community (the “Community Forum”). If Client has questions regarding the Services, Client may use the Community Forum to seek answers. Client may also use the Community Forum to receive online Technical Support and, in some circumstances, guidance for self-administering Incident Corrections. Dimension Data, Client, and other Dimension Data clients may publish content to the Community Forum from time-to-time. Dimension Data reserves the right to review and remove any content posted to the Community Forum, including any content that Dimension Data believes, in its sole discretion, to be:

(a) illegal, inappropriate or in violation of the AUP; or

(b) the subject matter of a complaint by any client.

Client acknowledges and agrees that all content that Client posts to the Community Forum is non-confidential.

8.2 Client will retain ownership of content that Client posts to the Community Forum (“Client Community Content”). Client hereby grants to Dimension Data a worldwide, non-exclusive, transferable, sublicensable (including to other clients in the Community Forum), royalty-free right and license to use, reproduce, publicly display, distribute and otherwise exploit such content. Client may use the content posted in the Community Forum during the term of this Agreement solely for the purpose of accessing and using the Services.

8.3 Dimension Data makes no warranty with respect to the accuracy, completeness or usefulness of any content found on the Community Forum, whether posted by Dimension Data or other clients. Client accordingly agrees that Dimension Data will not be held liable for any losses or damages Client may suffer resulting from:

(a) any use or access by Dimension Data or other clients of any content posted to the Community Forum by Client; and

(b) any content posted to the Community Forum by Dimension Data or one or more other clients.

Global Service Centre

8.4 In addition to using the Community Forum, Client may also obtain support via Dimension Data’s 24-hour help desk (“Global Service Centre” or “GSC”). Dimension Data will provide Client with access to phone and email support from the GSC twenty-four (24) hours per day, seven (7) days per week. The contact details for GSC support are included in the Welcome Pack.

9. Confidentiality and Data Security

Confidentiality

9.1 “Confidential Information” means all information (whether in written, oral, electronic, or other form) that is disclosed or otherwise made available by one party (the “Disclosing Party”) to the other party (the “Receiving Party”) in connection with this Agreement that is identified in the Agreement or at the time of disclosure as being confidential or proprietary. Confidential Information of Dimension Data includes the Services and Documentation and all pricing information. Confidential Information of Client includes all Client
Content. These Terms and any Orders shall be deemed to be Confidential Information of both parties, and notwithstanding anything to the contrary in this Section 9, neither party shall disclose the terms of any such document to any third party, other than to its affiliates and their respective legal counsel and accountants, without the other party’s prior written consent. Confidential Information does not include information that: (i) is or becomes publicly known other than as a result of any wrongful action or inaction of the Receiving Party; (ii) was already known to the Receiving Party prior to receiving it from the Disclosing Party; (iii) is obtained by the Receiving Party from an unrelated third person without a duty of confidentiality owed to the Disclosing Party; or (iv) is independently developed by the Receiving Party without reference to the Disclosing Party’s Confidential Information.

9.2 Subject to Section 9.3, the Receiving Party will not use Confidential Information of the Disclosing Party for any purpose other than to exercise its rights or perform its obligations under this Agreement. The Receiving Party will not disclose Confidential Information of the Disclosing Party to any third persons except to its employees, consultants or contractors who have a need to know such Confidential Information to exercise the Receiving Party’s rights or to perform the Receiving Party’s obligations under this Agreement and who are bound by confidentiality provisions (including provisions relating to non-use and nondisclosure) no less restrictive than those in this Agreement. The Receiving Party will protect the Confidential Information of the Disclosing Party with at least the same degree of care it uses to protect its own information of a similar nature or sensitivity, but in any event with no less than reasonable care. The Receiving Party will promptly advise the Disclosing Party in writing of any unauthorised disclosure, misappropriation or misuse of the Disclosing Party’s Confidential Information of which the Receiving Party becomes aware.

9.3 This Agreement will not prevent the Receiving Party from disclosing Confidential Information of the Disclosing Party to the extent required by a judicial order or other legal obligation, but, to the fullest extent permitted by law, the Receiving Party will promptly notify the Disclosing Party of such a required disclosure to allow intervention by the Disclosing Party (and will cooperate with the Disclosing Party) to contest or minimise the scope of the disclosure (including application for an injunction or similar protective order).

9.4 Each party acknowledges that monetary damages may not be a sufficient remedy for unauthorised disclosure or use of the other party’s Confidential Information and that the other party will be entitled, without waiving any other rights or remedies, to seek injunctive or other equitable relief to protect its Confidential Information.

Data Security

9.5 The Services allow customisation by Client, including options to install third-party software, implement security controls, establish and enforce user access controls, and select the Location(s) in which Client Content will be stored. Client acknowledges that it is responsible for using the Services properly and for taking its own steps to maintain appropriate security, protection, and backup of Client Content, which may include: (i) the use of encryption technology to protect Client Content from unauthorised access; and (ii) routine back-up and archiving of Client Content. Client is responsible for selecting the Location(s) in which Client Content will be hosted and Client will comply with all applicable laws with respect to Client Content and its use of the Services. Dimension Data uses reasonable security standards to protect the physical security of the data centres used to maintain Client Content but Dimension Data is not responsible for and assumes no liability related to the foregoing Client obligations.

Data Safeguards

9.6 Subject to Section 9.7, Client acknowledges that the Services operate in such a way as to not permit Dimension Data to access Client Content and Dimension Data has no ability to manipulate, modify or control Client Content.

9.7 Where Client requests support from Dimension Data that requires access to Client Content, Client may be required to issue temporary Credentials to Dimension Data to permit such access to Client Content. To the extent Client grants Dimension Data access to Client Content, Dimension Data agrees to:

(a) access and use the Client Content solely for the purpose of providing Services to Client;

(b) maintain physical, technical, and administrative safeguards to protect the Client Content against unauthorised access, use, or disclosure while it is accessible by Dimension Data; and
(c) not disclose the Client Content to any third party, except: (i) to its employees, consultants or contractors for purposes of providing Services to Client, provided that such recipients are bound by confidentiality provisions no less restrictive than those set out in this Agreement; and (ii) to the extent required by a judicial order or other legal obligation, provided that, to the fullest extent permitted by law, Dimension Data will promptly notify the Client of such a required disclosure to allow intervention by the Client (and will cooperate with the Client) to contest or minimise the scope of the disclosure.

No Backup

9.8 Client agrees that unless backup services are included in the applicable Order as part of Optional Services, Dimension Data will not create, maintain or implement backups of any Client Content and that Client is solely responsible for all backup, archiving and data retention of Client Content.

10. Representations and Warranties

Mutual Warranties

10.1 Each party represents and warrants to the other that:

(a) it has the full power and authority to enter in and perform this Agreement;

(b) it will comply with all applicable laws, rules, regulations and ordinances in the performance of this Agreement; and

(c) its performance of this Agreement does not put it in breach any other agreement.

Dimension Data Warranty

10.2 Dimension Data represents and warrants to Client that it will perform the Services materially in accordance with the applicable Service Description(s).

Third Party Software

10.3 Dimension Data will pass on to Client the benefit of any warranties and indemnities it receives under the Third Party Software Terms to the extent Dimension Data has the right to do so. Otherwise Dimension Data makes no, and expressly disclaims all, representations and warranties with respect to Third Party Software and Client’s use of Third Party Software is at Client’s sole risk.

Disclaimer

10.4 EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET OUT ABOVE, THE SERVICES AND ANY OTHER INFORMATION, TECHNOLOGY, CONTENT AND MATERIALS ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, AND DIMENSION DATA DOES NOT MAKE ANY, AND EXPRESSLY DISCLAIMS ALL, OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE. WITHOUT LIMITATION OF THE FOREGOING, DIMENSION DATA DOES NOT REPRESENT OR WARRANT THAT ACCESS TO THE SERVICES WILL MEET CLIENT’S REQUIREMENTS OR WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE. NO ADVICE, RESULTS OR INFORMATION OBTAINED BY CLIENT FROM DIMENSION DATA OR THROUGH ANY SERVICES, ANY DOCUMENTATION, OR THE COMMUNITY FORUM, WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE IN THIS AGREEMENT.

11. Indemnification

Dimension Data Indemnification

11.1 Dimension Data will defend Client from any third party claim, suit, action or proceeding, and will pay all related damages, costs, expenses, judgments, settlement amounts, and other liabilities (including reasonable attorney’s fees and costs) finally awarded against Client by a court or tribunal of competent jurisdiction, arising from any allegation that the Services, when used as authorized by the Agreement, in the
form provided by Dimension Data, infringe, misappropriate or violate any copyright, patent, trade secret, trademark or other intellectual property rights of a third party. If Client seeks indemnification under this Section, it must:

(a) provide Dimension Data with prompt notice of the claim;

(b) give Dimension Data sole control of the defence and related settlement negotiations; and

(c) reasonably cooperate with Dimension Data, at Dimension Data’s expense, in defending or settling the claim.

11.2 Notwithstanding the foregoing, Client may participate with Dimension Data in (but not control) the claim using counsel of its choice at its own expense, and Dimension Data will not enter into any settlement or other compromise of the claim that materially affects Client without Client’s written approval, which approval will not be unreasonably withheld, delayed, or conditioned.

Client Indemnification

11.3 Client will defend Dimension Data from any third party claim, suit, action or proceeding, and will pay all related damages, costs, expenses, judgments, settlement amounts, and other liabilities (including reasonable attorney’s fees and costs) finally awarded against Dimension Data by a court or tribunal of competent jurisdiction, to the extent arising from:

(a) any violation (or alleged violation) of applicable law by Client or any Client Content or Client Community Content;

(b) any allegation that any Client Content or Client Community Content infringes, misappropriates or violates any copyright, patent, trade secret, trademark or other intellectual property rights of a third party;

(c) any disputes with third party licensors or providers of any Client Content or Client Community Content; or

(d) any acts or omissions of Authorised Users or of Client’s customers or their respective end-users, including any breach of the license restrictions set out in Section 4.2.

Exclusions

11.4 Dimension Data will have no obligation to Client under this Section 11 with respect to:

(a) any modification of the Services by anyone other than Dimension Data;

(b) any Third Party Software;

(c) any combination of the Services with any Client Content or other software, hardware, network, infrastructure, or other materials not provided by Dimension Data if the claim would not have arisen but for such combination;

(d) use of the Services other than as permitted by the Agreement or contrary to the applicable Service Description(s); or

(e) Client’s continued use of the Services after notice of the alleged or actual infringement.

Additional Remedies

11.5 If the Services are the subject of an infringement claim (or Dimension Data reasonably believes that such a claim is likely), then Dimension Data may at its option and expense:

(a) procure for Client the right to continue to use the Services;

(b) modify the Services to be non-infringing or provide non-infringing substitutes with substantially similar functionality; or
(c) if Dimension Data cannot accomplish (a) or (b) using commercially reasonable efforts, terminate the Services and refund to Client the unused portion of any Fees paid in advance for the affected Services.

12. Fees and Payments

Fees Generally

12.1 Client will pay the Fees to Dimension Data.

12.2 Unless otherwise specified in the applicable Order: (i) Fees are due immediately upon invoice; and (ii) Client will make all payments by credit card.

Types of Fees

12.3 The following types of Fees apply to the Services:

(a) **Set-up Fee**: A one-time Fee for set-up and activation of Services as described in the applicable Order.

(b) **Usage Fees**: The Fees payable by Client each month based on: (i) Client's Usage; and /or (ii) any fixed Services selected by Client and provisioned by Dimension Data, as set out in the applicable Order(s). Client will pay the Minimum Usage Commitment in advance (“Minimum Usage Fee”) and will pay Fees for any Usage over the Minimum Usage Commitment in arrears (“Overage Fee”). Usage Fees are calculated based on the Usage Pricing Terms in effect on the date of each applicable invoice. Any changes to the Usage Pricing Terms will take effect from the last day of the full calendar month after publication.

(c) **Optional Service Fees**: The Fees payable by Client each month for Optional Services. Depending on the Optional Service, such Fees are payable either in advance or in arrears as indicated in the SDOS, and are included in the applicable Optional Services Order, or available upon request from Dimension Data or as otherwise described in the SDOS.

Invoicing

12.4 Dimension Data will invoice Client as follows:

(a) For Minimum Commitment Plans and Orders for Optional Services, on or after the Effective Date of an Order, Dimension Data will deliver an invoice for the first calendar month's Minimum Usage Fees (adjusted pro-rata for the remainder of the then-current calendar month), if applicable; the first calendar month's Optional Service Fees, if applicable (adjusted pro-rata for the remainder of the then-current calendar month); and the Set-Up Fee, if applicable. Each subsequent month, Dimension Data will deliver an invoice for:

   (i) the Minimum Usage Fees for such month;

   (ii) for Optional Service Fees that are required to be paid in advance, the applicable Optional Services Fees for such month; and

   (iii) the Overage Fees and, for Optional Services that are required to be paid in arrears, the applicable Optional Service Fees, in each case for the immediately preceding calendar month (and prior calendar months, if such Fees have accrued but have not yet been invoiced).

(b) For Usage-Based Plans, Dimension Data will deliver an invoice each month for the Usage Fees that accrued in the previous billing month. The date on which the first and each subsequent invoice will be delivered depends on the Effective Date of the applicable Order.

Payment and Taxes

12.5 Any Client-specific payment terms, including currency, dates and manner of payment, interest rates on late payment, and taxes, will be described in the applicable Order.

Additional Fees
12.6 Dimension Data may charge Client additional Fees on a time and materials basis at Dimension Data's then-current rates for any of the following: (i) Re-establishment (whether following suspension under Section 14 or otherwise) or other assistance requested by Client outside the scope of the applicable Order; or (ii) provision of Support to Client if Dimension Data determines that Client's request was not related to an Incident.

12.7 These Fees will be invoiced to Client in the month following the month in which they accrue.

Fees for Additional Service Offerings

12.8 Where Dimension Data adds a new offering to the Services (which was (i) not available for purchase and (ii) not included in the Usage Pricing Terms in effect, on the Effective Date of the applicable Order), the Fees payable for such new offering will be based on the then current Usage Pricing Terms, regardless of whether Client was on a Minimum Commitment Plan for previously existing Services.

Unforeseen Fee Increase

12.9 Notwithstanding anything to the contrary in this Agreement, Dimension Data may increase the Fees in an Order (including for Minimum Commitment Plans) if the costs or charges incurred by Dimension Data for electricity materially increase. Dimension Data will promptly notify Client in the event of such an increase in the Fees in an Order, and such increased Fees will go into effect on the last day of the calendar month immediately following such notice. Notwithstanding anything to the contrary in this Agreement, if Client does not agree to such a price increase for a particular Order, Client may terminate such Order at any time prior to the effective date of such increase by providing Dimension Data with written notice of such termination. Failure to terminate in accordance with the foregoing will constitute acceptance of such Fee increase.

Other Payment Terms

12.10 Dimension Data may apply any payment received from Client under any Order towards any amounts that Client owes to Dimension Data under this Agreement or otherwise. Client gives Dimension Data permission to provide any registered credit bureau with information about the payment of amounts Client makes under this Agreement.

12.11 Subject to section 12.12, Client may not withhold payment of any amount due to Dimension Data for any reason.

12.12 If Client disputes any part of an invoice on genuine grounds, Client must pay the undisputed part of the invoice before the due date.

13. Limitation of Liability

13.1 NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, EXCEPT FOR CLIENT’S OBLIGATIONS UNDER SECTION 11 (INDEMNIFICATION) OR CLIENT’S BREACH OF SECTION 4.2, TO THE FULL EXTENT PERMITTED UNDER APPLICABLE LAW:

(a) NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE SERVICES OR THIS AGREEMENT, INCLUDING DAMAGES FOR INTERRUPTION OF BUSINESS, LOSS OF PROFITS, LOSS OF GOODWILL, OR LOSS OF DATA, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF THE PARTY IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND

(b) IN NO EVENT WILL EITHER PARTY’S MAXIMUM AGGREGATE LIABILITY TO THE OTHER ARISING OUT OF OR RELATED TO THE SERVICES OR THIS AGREEMENT EXCEED THE AMOUNTS PAID BY CLIENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY. FOR AVOIDANCE OF DOUBT, THE FOREGOING LIMITATION OF LIABILITY DOES NOT APPLY TO CLIENT’S OBLIGATION TO PAY FEES.
### 14. Suspension

#### 14.1 Dimension Data reserves the right to suspend or restrict Client’s or any User’s access to and use of the Services if:

(a) Client or any User breaches this Agreement;

(b) Client or any User fails to cooperate with any reasonable investigation by Dimension Data of a suspected breach of this Agreement;

(c) Dimension Data reasonably determines that suspension is necessary to prevent or mitigate damage or disruption to Dimension Data’s systems or networks;

(d) Client fails to pay any Fees when due;

(e) there is an unusual spike or increase in Client’s use of the Services that impacts Dimension Data’s ability to deliver the Services; or

(f) as the result of any Excusing Event, (collectively “Service Suspensions”).

Dimension Data will use commercially reasonable efforts to provide: (i) prior notice of a Service Suspension; and (ii) updates regarding resumption of Services following a Service Suspension.

#### 14.2 Client Content stored on the Services may be unavailable during a Service Suspension. Without limiting Section 13, Dimension Data will have no liability for any damages, liabilities, or losses resulting from a Service Suspension.

### 15. Term and Termination

#### Term

15.1 This Agreement commences on the Effective Date of Client’s first Order and, unless terminated earlier, continues until the last expiration or termination date of any of Client’s Orders. The initial term of each Order will be stated in the Order. Subject to the terms of the applicable Order, each Order with a Minimum Commitment Plan will automatically renew for an additional twelve (12) month period (each a “Renewal Term”) upon expiration of the initial term or the then-current Renewal Term, unless either party provides written notice of termination at least 90 days prior to the expiration date of the Order.

15.2 Either party may terminate this Agreement or any or all Orders by notice to the other party, for any reason or no reason, with termination to be effective (i) no later than seven (7) days following such notice for Usage-Based Plans or (ii) at the end of the Minimum Commitment Term, as determined by Section 15.1, for Orders with Minimum Commitment Plans.

#### Termination for Cause

15.3 Either party may terminate this Agreement (and all Orders) or any individual Order upon notice to the other party if the other party materially breaches any term or condition of this Agreement or any Order and fails to correct such breach within fifteen (15) days following notice specifying such breach. Without limitation, Client’s failure to pay Fees on time and Client’s (or any User’s) noncompliance with Section 4.2 will constitute material breaches. In addition, Dimension Data may immediately terminate any Order or particular Services under an Order by notice to Client if continuing to provide the applicable Services to Client becomes infeasible as the result of a Force Majeure Event.

#### Effect of Termination

15.4 Upon expiration or termination of this Agreement or any Order:

(a) Dimension Data will cease providing the applicable Services and Client’s rights and licenses granted under this Agreement with respect to those Services will immediately terminate;
(b) all outstanding invoices will become immediately due and payable;

(c) the remainder of all monthly Fees for the remaining Minimum Commit Term (if applicable) will become immediately due and payable (termination by Client due to Dimension Data’s breach excepted); and

(d) Dimension Data will not be required to maintain or store, and may delete, Client Content hosted or stored in connection with the terminated Services, unless otherwise agreed in the applicable Order.

15.5 Either party's termination of this Agreement or any Order will be without prejudice to any other remedies that it may have at law or otherwise, and will not relieve either party of breaches occurring prior to the effective date of termination. The following Sections of these Terms will continue and survive after any expiration or termination: Sections 2, 4.2, 4.4, 4.5, 9, 10.4, 11, 12, 13, 15.4, 16, and 17.

16. General

Severability

16.1 If the application of any provision of this Agreement to any particular facts or circumstances will be held to be invalid or unenforceable by a court or tribunal of competent jurisdiction, then:

(a) the validity and enforceability of the provision as applied to any other particular facts or circumstances and the validity of other provisions of this Agreement will not in any way be affected or impaired, and

(b) the provision will be enforced to the maximum extent possible so as to effect the intent of the parties and be deemed to have been amended without further action by the parties to the extent necessary to make such provision valid and enforceable.

Governing Law

16.2 This Agreement will be governed by the laws of the jurisdiction indicated in the table in Section 17.1 (“Jurisdiction”).

Notices

16.3 Any notice, request, demand or other communication required or permitted by these Terms will:

(a) be in writing;

(b) reference this Agreement and the applicable Order; and

(c) be directed to the recipient’s address or email address (or facsimile number if applicable) specified in the applicable Order by prepaid registered post, hand delivery, or facsimile, and will be deemed to be properly given when received. In addition, Dimension Data may provide general notices related to the Services (including updates to these Terms, the Service Descriptions and the Service Level Terms) via http://www.dimensiondata.com/Services/CloudServices/Notices, and the parties may communicate regarding support-related issues via the Community Forum and the Global Service Centre.

Assignment

16.4 Neither party may assign, delegate or otherwise transfer, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other party, except that:

(a) Dimension Data may assign this Agreement without the prior written consent of Client to an affiliate or in connection with a merger, consolidation, or sale of all or a portion of Dimension Data’s assets or business; and

(b) Dimension Data may have any of the Services performed on its behalf by its affiliates or other third parties.
16.5 Subject to the foregoing, the rights and liabilities of the parties are binding on, and will inure to the benefit of, the parties and their respective successors and permitted assigns. Any attempted assignment, delegation or other transfer except in accordance with this Section will be ineffective.

Dispute Resolution and Venue

16.6 In the event of any dispute between the parties concerning interpretations or enforcement of this Agreement, except for requests for injunctive or other equitable relief, the parties agree to first attempt informal dispute resolution by selecting a joint resolution committee consisting of two (2) representatives from each party (the “Committee”) to meet and attempt to resolve the dispute within thirty (30) days from the emailing of a notice of demand for such dispute resolution to clouddisputes@dimensiondata.com for Dimension Data and to Client’s email address as indicated on the applicable Order, unless extended by mutual agreement of the parties. The Committee will determine its own procedures for the resolution of the dispute, and any decision of the Committee will be binding on the parties. Neither party will commence legal proceedings unless the parties have undertaken the process set out in this Section, and those processes have failed to resolve the dispute. Any dispute that is not resolved by this resolution process, and all requests for injunctive or other equitable relief, will be brought exclusively in the venue indicated in the table in Section 17.1 (“Venue”). Nothing in this Section will prevent either party from seeking interim or provisional relief concerning a Dispute, including a temporary restraining order, a preliminary injunction or an order of attachment, either prior to or during the dispute resolution process.

Right to Reference

16.7 Unless Client advises Dimension Data otherwise in writing, Client consents to Dimension Data using its name in any of Dimension Data’s marketing, sales materials, press releases, public announcements and case studies.

Waiver

16.8 Any waiver by either party of a breach of or a default under any provision of this Agreement must be in writing and will not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor will any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have under the Agreement operate as a waiver of any right or remedy.

Feedback

16.9 If Client provides suggestions for changes or improvements or other feedback (“Feedback”) about the Services or any of Dimension Data’s other products or services, Dimension Data may use such suggestions and feedback for any purpose without obligation or payment of any consideration and Client assigns to Dimension Data all right, title and interest (including intellectual property rights) in and to the Feedback.

Force Majeure

16.10 Except for the payment of Fees, neither party will be liable to the other for failure or delay in performing its obligations under the Agreement if such failure or delay is due to circumstances beyond its reasonable control, including acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labour disturbance, interruption of or delay in transportation, interruption of or delay in telecommunications or third party services, unanticipated product development problems, or inability to obtain raw materials, supplies or power used in or equipment needed for provision of the Services (each, a “Force Majeure Event”).

Relationship of the Parties

16.11 Nothing contained in this Agreement will be deemed or construed as creating a joint venture, partnership, agency, employment, or fiduciary relationship between the parties. Neither party, nor either party’s agents, have any authority of any kind to bind the other party in any respect whatsoever, and the relationship of the parties is, and at all times will continue to be, that of independent contractors.

No Third Party Beneficiaries
16.12 Nothing in this Agreement, express or implied, confers or is intended to confer on, any person other than the parties and the respective successors or permitted assigns of the parties, any rights, remedies, obligations or liabilities.

Changes to the Terms

16.13 Subject to Section 16.14, Dimension Data may change these Terms from time to time including when required by law or governmental entities (such change being a “Regulatory Change”). Dimension Data will provide notice to Client of changes including by posting the updated version of these Terms at cloud.dimensiondata.com/managed-hosting-terms-of-service. Client’s continued use of the Services following a change will be deemed acceptance by Client of the change provided that any material change to these Terms will not apply retrospectively to a claim or dispute between Client and Dimension Data in connection with these Terms that arose prior to the date of the change.

16.14 If Client is using Services under an Order with a Minimum Commitment Term, then Client may, on giving Dimension Data notice within ten (10) business days of the applicable change, elect not to have the change apply and to continue to use the Services for the remainder of the Minimum Commitment Term under the previously existing Terms.

No Presumptions

16.15 If an ambiguity or question of interpretation arises the Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof based on authorship will arise favouring one party over the other. Client waives any claims or defences regarding the validity or enforceability of this Agreement arising from the fact of electronic submission or presentation of the Agreement to Client.

Entire Agreement and Precedence

16.16 This Agreement is the entire agreement of the parties on the subject matter and supersedes any previous understanding or agreements. Except as otherwise provided with respect to updating of certain terms by Dimension Data, no modifications, additions, or amendments to this Agreement will be effective unless set out in a writing referencing this Agreement and signed by a duly authorised representative of each Party.

16.17 If there is any conflict or inconsistency between these Terms and the terms in any other document that forms the Agreement then:

(a) the terms in an Order will take precedence and resolve the conflict or inconsistency solely with respect to the specific variable terms included in the Order concerning pricing, payment, term, termination, or specific Services ordered; and

(b) these Terms will take precedence with respect to all other matters.

Interpretation

16.18 Headings are inserted for reference purposes only and do not affect the interpretation of the Agreement. For the purposes of interpreting this Agreement unless the context otherwise requires:

(a) the singular includes the plural, and the plural includes the singular;

(b) the words “include” and “including” will not be construed as terms of limitation, and will mean “including without limitation”;

(c) the words “writing” or “written” mean reduced to writing whether in electronic or hard copy form;

(d) references to the parties will refer to their permitted successors and assigns; and

(e) references to any document, agreement, instrument or statute mean that document, agreement, instrument or statute as amended from time to time.
17. Geography and Location Specific Terms

17.1 As described in Sections 16.2 and 16.6, the following table indicates the Jurisdiction and Venue applicable to this Agreement. The applicable Geography is the Geography indicated on Client’s Order, regardless of whether Client is allocating any resources in or to any other Geography.

<table>
<thead>
<tr>
<th>Geography</th>
<th>Jurisdiction</th>
<th>Venue</th>
</tr>
</thead>
<tbody>
<tr>
<td>North America</td>
<td>The laws of the state of New York, United States of America.</td>
<td>The parties submit to the exclusive jurisdiction of the courts of the state of New York, United States of America.</td>
</tr>
<tr>
<td>Europe</td>
<td>The laws of England and Wales.</td>
<td>The parties submit to the exclusive jurisdiction of the courts of England and Wales.</td>
</tr>
<tr>
<td>Australia</td>
<td>The laws in force in the state of New South Wales, Australia.</td>
<td>The parties submit to the non-exclusive jurisdiction of the courts of the state of New South Wales and the Commonwealth of Australia.</td>
</tr>
<tr>
<td>MEA</td>
<td>The laws of South Africa, without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of South Africa to the rights and duties of the parties.</td>
<td>The parties submit to the exclusive jurisdiction of a South African court of competent jurisdiction.</td>
</tr>
<tr>
<td>Asia</td>
<td>The laws of Singapore.</td>
<td>The parties submit to the exclusive jurisdiction of the courts of Singapore.</td>
</tr>
</tbody>
</table>

17.2 The following section sets out amendments to Sections 1 through 16 of these Terms which apply when Client is accessing Services via an MCP located in the Geography identified.

**North America**

(a) The following is added as Section 16.17:

“Export Controls

16.17 Client will comply with all applicable export laws and regulations in its use of the Service. No part of the Services may be downloaded or otherwise exported or re-exported (i) into any country for which the United States has a trade embargo, or (ii) to anyone on the U.S. Treasury Department’s list of Specially Designated Nationals, which is currently maintained at [http://www.treasury.gov/resource-Centre/sanctions/SDN-List/Pages/default.aspx](http://www.treasury.gov/resource-Centre/sanctions/SDN-List/Pages/default.aspx), or the U.S. Commerce Department’s Denied Persons List, which is currently maintained at [http://www.bis.doc.gov/dpl/thedeniallist.asp](http://www.bis.doc.gov/dpl/thedeniallist.asp). Client represents and warrants that it is not located in, under the control of, or a national or resident of any such country or on any such list.”

**Australia**

(a) Section 10.4 is replaced by the following:
“Implied Warranties

10.4 The application of the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention) to this Agreement (by virtue of any law relevant to this Agreement) is excluded.

10.5 Pursuant to the Australian Consumer Law (under the Competition and Consumer Act 2010 (Cth)):

(a) this sub-section 10.5 applies in respect of any of the goods or services supplied under this Agreement which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that this sub-section will not apply if the Client establishes that reliance on it would not be fair and reasonable;

(b) our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure;

(c) liability for breach of a guarantee conferred by the Australian Consumer Law (under the Competition and Consumer Act 2010 (Cth), other than those conferred by ss 51–53 of that Law, is limited:

(i) in the case of goods, to any one of the following as determined by Dimension Data:

(A) the replacement of the goods or the supply of equivalent goods; or
(B) the repair of the goods; or
(C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
(D) the payment of the cost of having the goods repaired;

(ii) in the case of services, to any one of the following as determined by Dimension Data:

(A) the supplying of the services again; or
(B) the payment of the cost of having the services supplied again.

Disclaimer

10.6 EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET OUT ABOVE AND SUBJECT TO SECTION 10.5, THE SERVICES, ALL THIRD PARTY SOFTWARE, ALL THIRD PARTY SERVICES, AND ANY OTHER SERVICES, SOFTWARE, INFORMATION, TECHNOLOGY, CONTENT, EQUIPMENT AND MATERIALS ARE PROVIDED BY DIMENSION DATA ON AN “AS IS” AND “AS AVAILABLE” BASIS, AND DIMENSION DATA DOES NOT MAKE ANY, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE. WITHOUT LIMITATION OF THE FOREGOING, DIMENSION DATA DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR ANY THIRD PARTY SOFTWARE OR THIRD PARTY SERVICE WILL MEET CLIENT’S REQUIREMENTS OR WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE, AND CLIENT’S USE OF AND ACCESS TO THIRD PARTY SOFTWARE AND THIRD PARTY SERVICES IS AT CLIENT’S SOLE RISK. NO ADVICE, RESULTS OR INFORMATION OBTAINED BY CLIENT FROM DIMENSION DATA OR THROUGH ANY SERVICES, ANY DOCUMENTATION, OR THE COMMUNITY FORUM, WILL CREATE ANY WARRANTY. THE ONLY REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THIRD PARTY SOFTWARE AND THIRD PARTY SERVICES ARE THOSE, IF ANY, THAT ARE: (1) MADE BY THE APPLICABLE THIRD PARTY PROVIDERS DIRECTLY TO CLIENT AND/OR (2) SET OUT IN THE THIRD PARTY TERMS.”

Middle East and Africa

(a) Section 10.4 is replaced by the following:

“EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET OUT ABOVE AND, UNLESS ANY WARRANTIES ARE IMPLIED INTO THIS AGREEMENT BY A LAW WHICH CANNOT BE EXCLUDED, THE SERVICES AND ANY OTHER INFORMATION, TECHNOLOGY, CONTENT AND MATERIALS ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, AND DIMENSION DATA DOES NOT MAKE ANY, AND EXPRESSLY DISCLAIMS ALL, OTHER WARRANTIES, EXPRESS OR
IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, WITHOUT LIMITATION OF THE FOREGOING, DIMENSION DATA DOES NOT REPRESENT OR WARRANT THAT ACCESS TO THE SERVICES WILL MEET CLIENT’S REQUIREMENTS OR WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE. NO ADVICE, RESULTS OR INFORMATION OBTAINED BY CLIENT FROM DIMENSION DATA OR THROUGH ANY SERVICES, DOCUMENTATION, OR THE COMMUNITY FORUM, WILL CREATE ANY WARRANTY. IN ADDITION, EXCEPT AS SET FORTH IN SECTION 10.3, DIMENSION DATA MAKES NO, AND EXPRESSLY DISCLAIMS ALL, REPRESENTATIONS AND WARRANTIES REGARDING THIRD PARTY SOFTWARE, AND THE ONLY REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THIRD PARTY SOFTWARE ARE THOSE THAT ARE MADE BY APPLICABLE THIRD PARTY LICENSORS AND SET FORTH IN THE THIRD PARTY SOFTWARE TERMS.

(b) Section 16.2 is replaced with the following:

“This Agreement will be governed by the laws of South Africa, without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of South Africa to the rights and duties of the parties.”

(c) Section 16.3.c is replaced with the following:

“be directed to the recipient's address or email address (or facsimile number if applicable) specified in the applicable Order by prepaid registered post, hand delivery, or facsimile, and will be deemed to be properly given when received. All legal notices must be sent to the legal manager. In addition, Dimension Data may provide general notices related to the Services via http://www.dimensiondata.com/Services/CloudServices/Notices, and the parties may communicate regarding support-related issues via the Community Forum and the Global Service Centre.”

**Europe**

(a) The following is added as Section 16.18:

**“Additional Data Protection Provisions**

16.18 The provisions of this Section 16.18 apply to any Client that is located in or operates from, or collects Client Data (as defined on this Section16.18) in or in any way processes any Client Data in, any member state of the European Union. Client and Dimension Data acknowledge that for the purposes of the Data Protection Act 1998, Client is the Data Controller and Dimension Data may be deemed to be a data processor in respect of any Client Data. Dimension Data shall not process the Client Data for any purpose other than those expressly requested and authorised by Client and where Dimension Data expressly agrees to undertake such processing. Each party warrants (with Dimension Data only warranting in the event that it expressly agrees to process any Client Data) to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments. Where applicable, Dimension Data warrants that, having regard to the state of technological development and the cost of implementing any measures, it will take appropriate technical and organisational measures against the unauthorised or unlawful processing of Client Data and against the accidental loss or destruction of, or damage to, Client. Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this section 16.18. Client acknowledges that Dimension Data is reliant on Client for direction as to the extent to which Dimension Data is entitled to use and process the Client Data. Consequently, Dimension Data will not be liable for any claim brought by a Data Subject arising from any action or omission by Dimension Data, to the extent that such action or omission resulted directly from Client's instructions. Dimension Data may authorise a third party ("sub-contractor") to process the Client Data provided that the sub-contractor's contract is on terms which are substantially the same as those set out in this Agreement and terminates automatically on termination of this Agreement for any reason.

For the purposes of this Section 16.18 the following definitions apply:
Client Data means Personal Data in respect of which the Client is the Data Controller and which the Client may be processing using the Services.

Data Controller has the meaning set out in section 1(1) of the Data Protection Act 1998.

Data Subject means an individual who is the subject of Client Data.

Personal Data has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, in respect of which the Company is the Data Controller and in relation to which the Processor is providing services under this agreement.

Processing and process have the meaning set out in section 1(1) of the Data Protection Act 1998.”