

Actus Terms and Conditions of Business 2018



CONTENTS

CLAUSE

1. INTERPRETATION.....	3
2. USER LICENCES	6
3. CUSTOMER'S OBLIGATIONS	6
4. ACTUS OBLIGATIONS.....	9
5. ACTUS SUPPORT AND SERVICES.....	10
6. CUSTOMER DATA.....	10
7. THIRD PARTY PROVIDERS	12
8. CHARGES AND PAYMENT	12
9. INTELLECTUAL PROPERTY RIGHTS	13
10. CONFIDENTIALITY.....	14
11. LIMITATIONS OF LIABILITY	15
12. TERM AND TERMINATION.....	15
13. FORCE MAJEURE.....	16
14. ASSIGNMENT.....	17
15. THIRD PARTY RIGHTS	17
16. NOTICES	17
17. GENERAL.....	17
18. DISPUTES, GOVERNING LAW AND JURISDICTION	18
SCHEDULE A.....	19

These Terms and Conditions may be subject to change at Actus's discretion, however any such changes will not result in a material reduction in the level of performance, security or availability of services to the Customer and changes will be communicated to Customers directly.

Placing an order for Actus products or services via an Actus order form which incorporates and/or refers to these Actus Standard Terms and Conditions requires the Customer to agree to be legally bound by this document for the duration of their licence term. The person who signs the order form is deemed to be the Customer Representative and has the authority to bind the Customer to the following Terms and Conditions.

Advance Change Limited, trading as and referred to throughout as Actus, is registered in England and Wales with company number 6763266, whose registered office is at The Pumphouse, 73 Dunstable Road, Redbourn, AL3 7PP and whose email address is info@actus.co.uk (**Actus**)

TERMS AND CONDITIONS

- (1) Advance Change Limited, trading as and referred to throughout as Actus, is registered in England and Wales with company number 6763266, whose registered office is at The Pumphouse, 73 Dunstable Road, Redbourn, AL3 7PP and whose email address is info@actus.co.uk (Actus);

BACKGROUND

- (A) Actus has developed software applications and platforms which it makes available to organisations via the internet on a price per user basis to support a range of Human Resource Management activities, including performance and talent management, attendance tracking, development, feedback and recognition.
- (B) The Customer wishes to use Actus software and service in its operations.
- (C) Actus has agreed to provide and the Customer has agreed to take and pay for Actus products and/or services subject to these Terms and Conditions.

AGREED TERMS

1. INTERPRETATION

The definitions and rules of interpretation in this clause apply in these Terms and Conditions

Actus: the Actus legal entity Advance Change Ltd trading as Actus or Actus Software.

Actus Services: refers to the full or partial scope of products and services provided by Actus and consists of:

Actus Learning: the training or support services provided by Actus to the Customer. This includes face to face, web and video based learning tools.

Actus Software: the online software application provided via www.actuslogin.com or www.actuslogin.co.uk or any other website or application notified to the Customer by Actus from time to time.

Actus Consultancy: the other professional services including consultancy and project management that support Actus Software implementation and / or Actus Learning.

Agreement: the sign off document that confirms the Customer entering in to a contract for services with Actus and the acceptance of these Terms and Conditions.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Software and Services and in respect of whom the Customer has paid a User Licence or who have been authorised to use the Actus Software by Actus temporarily or pursuant to a demonstration.

Actus Software Data Security Policy amended from time to time and available at www.actus.co.uk

Billing Period: a time period as set out in the Agreement.

Business Day: any day which is not a Saturday, Sunday or public holiday in England and Wales.

Confidential Information: information that is proprietary or confidential or is clearly labelled as such or expressly identified as Confidential Information in clause 10.

Customer Data: the data input by the Customer, Authorised Users, or Actus on the Customer's behalf pursuant to clause 6 of these Terms and Conditions for the purpose of using Actus Software or facilitating the Customer's use of other Actus Services, in each case including personal and special category data.

Data Controller: an individual, corporate or unincorporated body who determines what personal or special category data will be processed in a particular activity or operation, and the purpose for that processing.

Data Processor: an individual, corporate or unincorporated body who is contracted by a Data Controller to carry out a specific set of processing activities on a set of personal or special category data on the Data Controller's behalf.

Data Protection Legislation: (a) from (i): the date of the Agreement until 24 May 2018 (inclusive), the United Kingdom Data Protection Act 1998; (ii) from 25 May 2018 (inclusive) the EU Regulation 2016/679 General Data Protection Regulation (GDPR) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC; and (iii) from 29 March 2019 (inclusive) the United Kingdom Data Protection Act 2018 (incorporating the GDPR); and (b) all other laws concerning the processing of data relating to living persons.

Customer Representative: The person who has the authority to bind the Customer contractually to use the services

Data Subject: The identified or identifiable person to whom the personal or special category data relates.

Demonstration: a free demonstration or trial of Actus Software for a limited period to an agreed number of Users for the purposes of showing the benefits of the Service which demonstration shall, be subject to our standard Terms and Conditions.

Documentation: the document(s) made available to the Customer by Actus online via www.actus.co.uk; www.actuslogin.com or such other web address notified by Actus to the Customer from time to time which sets out a description of the Actus Software and other Actus Services and the user instructions for the Actus Software.

Effective Date: the date that the agreement is valid from once both parties have signed it and set up fees are chargeable from.

Go Live Date: the date when Actus Software is made fully available to the Customer for system validation or full roll out and from which licence fees commence and are renewed from.

HR Admin User: User(s) within the Customer who will take a lead role in administering and managing Actus Software internally. Such person will require formal training from Actus and will have visibility of and access to all data within that Customer.

Implementation Fee: the one-off fee payable by the Customer to Actus for configuring the system and uploading data.

Initial Licence Term: the initial term of the Agreement that runs from the Go Live Date as set out in the Agreement .

Intellectual Property Rights: include without limitation, rights in patents, trademarks, service marks, trade names, other trade-identifying symbols and inventions, copyrights, design rights, database rights, rights in know-how, trade secrets and any other intellectual property rights arising anywhere in the world, whether registered or unregistered, and including applications for the grant of any such rights.

Licence Fees: the licence fees payable by the Customer to Actus for the User Licences, as set out in the Agreement

Licence Term: the period of time for which the licence to use Actus Software applies, as outlined in clause 12.1.

Month or Monthly: a period of a month starting on a specific day of the month in one month and ending on the previous day of the month in the following month.

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

Personal Data: means any information about an individual from which that person can be identified, including special category (sensitive) data and information.

Privacy & Security Policy: Actus's privacy and security policies as amended from time to time and available at www.actus.co.uk

Super User: Users within the Customer who have received additional training from Actus to provide local user guidance and support and support implementation.

Start Date: Usually the same as the effective date of the Agreement and the point at which Set up and Configuration fees become applicable or, in the case of a Demonstration or Pilot, the date the Demonstration or Pilot period commences.

User Licences: the User Licences purchased by the Customer pursuant to the Agreement that entitle Authorised Users to access and use the Actus Software and Documentation in accordance with these Terms and Conditions.

Virus: anything 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.

- 1.1 Clause, schedule and paragraph headings shall not affect the interpretation of these Terms and Conditions.
- 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 Customer shall include any company, corporation, registered charity or public sector organisation wherever and however incorporated or established.
- 1.4 Words in the singular shall include the plural and vice versa.
- 1.5 A reference to one gender shall include a reference to the other gender.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to writing or written includes e-mail but not fax, text, instant messages or similar.

2. USER LICENCES

- 2.1 Subject to the Customer paying the Implementation Fee and the Licence Fees and acceptance of these Terms and Conditions, Actus hereby grants to the Customer a personal, non-exclusive, non-transferable, revocable right to permit the Users to use the Actus Software and the Documentation during the Licence Term, or during the Demonstration, as the case may be, solely for the Customer's internal business operations and not otherwise.

3. CUSTOMER'S OBLIGATIONS

- 3.1 the Customer undertakes that:
 - (a) the maximum number of Authorised Users that it authorises to access and use the Actus Services and the Documentation shall not exceed the number of User Licences it has purchased from time to time;
 - (b) it will not allow or suffer any User Licence to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Actus Software and/or Documentation;
 - (c) each Authorised User understands that their Actus Login can provide access to personal and special category data and that they should keep their password confidential, should log out of browsers after use, particularly on shared devices and should access the Actus Software from a suitably secure device or PC;

- (d) each Authorised User will receive regular and adequate training on data protection practices and behaviours in line with the current enforceable data privacy legislation, to ensure responsibility and accountability of all Authorised Users for the data processing carried out, and the unrestricted rights and freedoms of data subjects;

3.2 The Customer shall not access, store, distribute or transmit any Virus to the Actus Software, or any material during the course of its use of the Actus Software that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability;
- (f) infringes on or endangers, frustrates or breaches the rights and freedoms under law of data subjects; or
- (g) is otherwise illegal or causes damage or injury to any person or property;

and Actus reserves the right, without liability to the Customer and without prejudice to other rights available to it, to suspend the Actus Software and/or disable the Customer's access to any material that breaches the provisions of this clause.

3.3 The Customer shall not, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Terms and Conditions.:

- (a) Attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation or any of the personal data contained within the platform (as applicable) in any form or media or by any means or attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Actus Software and Documentation in order to build a product or service which competes with Actus Software and/or the Documentation; or
- (c) use the Actus Software and/or Documentation to provide services to third parties without written permission from Actus; or
- (d) licence, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Actus Software and/or Documentation or any of the personal data contained in the platform available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Actus Software and/or Documentation or any of the personal data contained in the platform other than as provided under this clause 3; and

- 3.4 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Actus Software and/or the Documentation and the personal data contained within the platform and, in the event of any such unauthorised access or use, shall immediately notify Actus of such a breach.
- 3.5 The total number of User Licences agreed at the Start Date and made available to the Authorised Users of the Customer from the Go Live date for the duration of the Initial Licence Term are as set out in the Agreement.
- 3.6 The Customer may from time to time buy additional Licences during the licence term at the rates set out in the Agreement.
- 3.7 The Customer shall:
- (a) provide Actus with all necessary co-operation in relation to these Terms and Conditions; and
 - (b) provide all necessary access to such information as may be required by Actus in order to facilitate the provision of Actus Software and any other Actus Services;
 - (c) comply with all applicable laws and regulations with respect to these Terms and Conditions;
 - (d) carry out all Customer obligations in the Agreement in a timely and efficient manner. In the event of any delays by the Customer, Actus may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - (e) ensure that they notify Actus promptly of changes in Lead HR Admin or Super Users who will be responsible for the internal management of Actus Software or other Actus Services;
 - (f) utilise the free Actus training materials or refresher webinars to ensure that they have enough internal HR Admin or Super Users to adequately support their Users;
 - (g) ensure that only Authorised Users use the Actus Software and the Documentation in accordance with the Terms and Conditions and the Customer shall be responsible for any User's breach of these Terms and Conditions;
 - (h) take responsibility for any data breaches caused by Users accessing the Software over inadequately secured networks or devices.
 - (i) obtain and maintain all necessary licences, consents, and permissions necessary for Actus, to process user information within Actus for one or more of the following purposes only: Performance management and appraisal; absence management; HR Administration; Feedback, Talent Management or Regulatory Compliance.
 - (j) take accountability for any impact on user experience when accessing the Actus Services caused by using out of date or insecure IT platforms or browsers;
 - (k) be solely responsible for procuring and maintaining its network connections and telecommunications links from their Actus Software application to Actus's data centres.

4. ACTUS OBLIGATIONS

- 4.1 Actus undertakes that the Actus Software and other Actus Services will be provided in line with the agreed defined scope of works and with reasonable skill and care.
- 4.2 Any additional functionality or Actus Services can be defined and may be provided during the initial licence term and charged for in line with the Actus Services rates outlined in the Agreement or through pricing agreed separately in writing.
- 4.3 Actus shall use commercially reasonable endeavours to make the Actus Software available to the Customer and its Authorised Users, except for:
- (a) planned maintenance or upgrades carried out within a window of 02.00 am to 07.30 am UK time, details of which will be given to the Customer at least 24 hours' in advance, if the Actus Software will be affected; and
 - (b) unscheduled software or server maintenance which Actus will use reasonable endeavours to perform outside Normal Business Hours and where practical shall give the Customer at least 24 hours' notice in advance if the Actus Software will be affected. The full and current Actus Support policy can be accessed at www.actus.co.uk
- 4.4 The undertaking in clause 4.3 shall not apply to the extent that any non-conformance is caused by the use of the Actus Software contrary to the Agreement or Actus instructions, Customer infrastructure or modification or alteration of the Actus Software by any party other than Actus.
- 4.5 If the Actus Software does not comply with clause 4.3, Actus will use reasonable commercial endeavours to correct any such non-conformance / availability promptly. Such correction or substitution constitutes the Customer sole and exclusive remedy for any breach of the undertaking set out in clause 4.1.
- In the unlikely event of sustained non-conformance (defined as a total inability to access Actus Software for 24 hours or more), Actus will provide regular Customer updates to the Customer about the extent of the issue and will provide a written explanation of the cause and mitigation within 7 days of the event. Notwithstanding the foregoing, Actus:
- (a) does not warrant that the Customer's use of the Actus Software will be uninterrupted or error-free; nor that the Actus Software, Documentation and/or the information obtained by the Customer through the Actus Services will meet any of the Customer's requirements; and
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet; and the Customer acknowledges that the Actus Software and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 4.6 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.
- 4.7 Actus Software provided for the purposes of a Demonstration are provided on an 'as is' basis and without any warranties or liability on the part of Actus.

5. ACTUS SUPPORT AND SERVICES

- 5.1 Actus shall, during the Licence Term, provide Actus Software, Actus Learning and other Actus Services as agreed with the Customer subject to these Terms and Conditions.

If bespoke software development is carried out on behalf of a Customer, whether paid or unpaid, the resulting code and functionality from the software development will become the Intellectual Property of Actus and may be made available to all Customers in order to maintain consistency in the configuration build of the Actus Software platform.

- 5.2 The Customer is responsible for first line end user support in respect of Actus Software and shall only escalate support issues to Actus via the designated HR Admin User or a Super User. The Customer is encouraged to minimise support issues by making full use of the Actus Learning materials both at software implementation stage and beyond.
- 5.3 Actus will provide the Customer with second line support for Actus Software support at no additional cost to the Customer, during Normal Business Hours. Further details are outlined in the support policy available at www.Actus.co.uk
- 5.4 Actus will proactively contact the Customer to recommend Actus Services that add value such as training or system enhancements that are likely to improve the Customer experience and/or return on investment.

6. CUSTOMER DATA

- 6.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

- 6.2 Actus shall follow stringent back up and archiving procedures for Customer Data as set out in its Security Policy accessible at www.actus.co.uk . In the unlikely event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Actus to use its reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Actus in accordance with the Actus Security Policy.

- 6.3 Actus shall, in providing the Actus Software and other Actus Services, comply with its Privacy & Security Policies both accessible at www.actus.co.uk. Furthermore Actus shall assist the Customer in responding to any request from a Data Subject and in ensuring compliance with its obligations under the current enforceable Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators, and Data Subjects' rights and freedoms under current enforceable Data Protection Legislation.

- 6.4 If Actus processes any personal data on the Customer's behalf when performing its obligations, the parties record their intention that the Customer shall be the data controller and Actus shall be a data processor and in any such case:

- (a) Personal data is stored in the UK and will not be transferred or stored outside the UK by Actus unless specifically requested by the Customer in writing and the following conditions are fulfilled:

- (a) the Customer or Actus has provided appropriate safeguards in relation to

- the transfer;
 - (b) the data subject has enforceable rights and effective legal remedies;
 - (c) the Customer or Actus comply with their obligations under the current enforceable Data Protection Legislation by providing an adequate level of security protection to any Personal Data that is transferred;
 - (d) the Customer or Actus ensure that any proposed recipients for the exported Personal Data have in place a signed written agreement containing applicable clauses for protection of data transfers under an approved framework, such as Binding Corporate Rules, Standard Contractual (EU Model) Clauses or through membership the EU-US Privacy Shield.
 - (e) Actus complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data.
- (b) the Customer shall ensure that it is entitled to transfer the relevant personal data to Actus so that Actus may lawfully use, process and transfer the personal data in accordance with the Agreement on the Customer's behalf;
 - (c) the Customer shall ensure that Authorised Users and any 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 including GDPR; for one or more of the following purposes only: Performance management and appraisal; absence management; HR Administration; Feedback, Talent Management or Regulatory Compliance including SMCR.
 - (d) Actus shall process the personal data only in accordance with these Terms and Conditions and any lawful instructions reasonably given by the Customer in writing from time to time; and
 - (e) each party shall take appropriate technical and organisational measures to protect against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.
 - (f) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Data Protection Law to store the Personal Data.
- 6.5 Without prejudice to the foregoing, both parties agree that in the performance of these terms and conditions they shall, without limitation, each comply with the EU Regulation 2016/679 General Data Protection Regulation (GDPR), and from 29 March 2019 (inclusive) the United Kingdom Data Protection Act 2018 (incorporating the GDPR) and all applicable laws and regulations relating to the processing of personal data and data subject rights and freedoms to privacy.
- 6.6 Actus will provide regular upgrades and enhancements to the services within the licence fee and may migrate Customer data to the most up to date version of Actus Software during the licence term at no additional cost to the Customer in order to optimise functionality and security.
- 6.7 The Customer consents to the Provider appointing Memset Ltd as a third-party processor of Personal Data under this agreement. The Provider confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating

terms which are substantially similar to those set out in this clause 6. As between the Customer and the Provider, the Provider shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 6. The Customer acknowledges that the Provider is able to appoint additional third party processors in accordance with this clause provided that the Customer is informed in writing of their appointment.

- 6.8 Without prejudice to the foregoing, both parties agree that in the performance of these terms and conditions they shall, without limitation, each comply with the EU Regulation 2016/679 General Data Protection Regulation (GDPR), and from 29 March 2019 (inclusive) the United Kingdom Data Protection Act 2018 (incorporating the GDPR) and all applicable laws and regulations relating to the processing of Personal Data and data subject rights and freedoms to privacy. For the purposes of the GDPR Schedule A sets out the scope, nature and purpose of processing by Actus, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 6.9 Actus will provide regular upgrades and enhancements to the services within the licence fee and may migrate Customer data to the most up to date version of Actus Software during the licence term at no additional cost to the Customer in order to optimise functionality and security. In addition, Actus will regularly assess and evaluate the effectiveness of the technical and organisational measures adopted by it.

7. THIRD PARTY PROVIDERS

The Customer acknowledges that where the Actus Services may enable or assist it to access the website content of, correspond with, and purchase products and services from third parties via third-party websites, the Customer does so solely at its own risk. Actus does not endorse or approve any third-party website nor the content of any of the third-party websites made available via the Actus Services.

8. CHARGES AND PAYMENT

- 8.1 The Customer shall pay the Implementation Fee and the Licence Fees for the User Licences to Actus in accordance with this clause 8 of the Agreement.
- 8.2 Actus shall invoice the Customer in accordance with the Agreement. The Customer may pay monthly, quarterly or annually and shall settle each invoice via Direct Debit unless otherwise agreed and confirmed in writing by Actus.
- 8.3 The Initial Licence Term shall be for three years and will then revert to rolling annual if a new three year Agreement has not been agreed by the end of The Initial Licence Term.
- 8.4 Customers within a three year Agreement who are paying by Direct Debit are exempt from the standard annual licence increase of 3% applied on the anniversary date of the Agreement. If the Customer is on a rolling annual Licence Term post an initial three year Licence Term the 3% increase will apply.
- 8.5 Any variations to these Terms and Conditions will result in the annual licence fee increase of 3% per annum being applicable.

- 8.6 Should the Customer wish to take advantage of additional Actus Software functionality or modules during the Initial Licence Term or subsequent Licence Terms, these can be provided and charged for at an agreed rate. Any additional Licence Fee charges will be agreed in writing and billed accordingly from that point onwards.
- 8.7 Actus Project Management Services agreed as part or set up or implementation should be utilised within 90 days, any unused hours will expire at this point. Additional project management time can be procured throughout the contract.
- 8.8 Actus Training and Actus Services rates exclude reasonable expenses which will be chargeable to the Customer at cost or in the case of mileage at 45p per mile (this may increase over time as per UK Government guidelines).
- 8.9 In the event of short notice cancellation or rescheduling of Actus Learning or Actus Consultancy or other Actus Services, Actus reserves the right to charge at the following rates:
- (a) 100% within 5 working days;
 - (b) 75% within 6-10 working days;
 - (c) 50% within 11-15 working days.
- 8.10 If Actus has not received payment within 15 days after the due date of an invoice Actus will first contact the Customer in order to resolve the situation. If this is not resolved or responded to Actus reserve the right to:
- (a) disable the Customer's password, account and access to all or part of the Actus Software and Actus shall be under no obligation to provide any or all of the Actus Services while the invoice(s) concerned remain unpaid;
 - (b) If access to the Actus Software is disabled in line with clause 8.10(a) and then reinstated, Actus shall be entitled to levy a minimum admin fee of £500 for up to 500 Users and a further £500 per additional 500 users for this and any subsequent reinstatement.
- 8.11 All amounts and fees stated or referred to in the Agreement:
- (a) shall be payable in the agreed currency;
 - (b) are non-cancellable and non-refundable;
 - (c) are exclusive of value added tax where applicable, which shall be payable in addition at the appropriate rate.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 The Customer acknowledges and agrees that Actus owns all Intellectual Property in the Actus Software, other Actus Services and Documentation. Except as expressly stated herein, these Terms and Conditions do not grant the Customer any rights or licences in respect of the Actus Software, or other Actus Services or Documentation.
- 9.2 Actus confirms that it holds all the rights in relation to the Actus Software, Actus Services and other Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the Agreement and these Terms and Conditions.

- 9.3 In no event shall Actus be liable to the Customer to the extent that any alleged infringement is based on:
- (a) a modification of the Actus Software or Documentation by anyone other than Actus; or
 - (b) the Customer's use of the Actus Software or Documentation in a manner contrary to these Terms and Conditions or the instructions given to the Customer by Actus; or
 - (c) the Customer's use of the Actus Software or Documentation after it became aware of the alleged or actual infringement.
- 9.4 The Customer gives consent in principle to Actus to display the logo and name of the Customer on the Actus website or in pre-authorized marketing material. Such consent may be withdrawn by the Customer at any time.

10. **CONFIDENTIALITY**

- 10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under these Terms and Conditions. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 10.2 Each party shall hold both parties Confidential Information in confidence and, unless required by law or regulatory authority, not make such Confidential Information available to any third party, or for any purpose other than the implementation of these Terms and Conditions.
- 10.3 Each party shall take all reasonable steps to ensure that access to Confidential Information relating to either party is carefully controlled and is not disclosed or distributed by its employees or agents in violation of these Terms and Conditions
- 10.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 10.5 The Customer acknowledges that the results of any performance tests of the Actus Software, or competitive marketing information such as client lists or pricing constitute Actus Confidential Information.

- 10.6 Actus acknowledges that the Customer Data is the Confidential Information of the Customer, and that the personal and special category data contained within the platform belongs to the individual data subjects to whom that data relates.
- 10.7 This clause 10 shall survive termination of these Terms and Conditions, however arising.

11. LIMITATIONS OF LIABILITY

- 11.1 This clause 11 sets out the entire financial liability of each party to the other arising under or in connection with these Terms and Conditions.
- 11.2 Except as expressly provided in these Terms and Conditions, the Customer assumes sole responsibility for results or assurances required by its use of the Actus Software and the Documentation. Actus shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Actus by the Customer in connection with the Actus Software, or any actions taken by Actus at the Customer's direction.
- 11.3 The Customer shall be solely responsible for 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.
- 11.4 Subject to clause 11.2 and 11.3:
- (a) Neither party shall be liable to the other (whether in tort, contract or otherwise) for any loss of profits, loss of business, special, indirect or consequential loss, depletion of goodwill and/or similar losses howsoever arising; and
 - (b) Without prejudice to the Customer's obligation to comply with its payment obligations set out in the Agreement, the total aggregate liability of each party to the other arising under or in connection with the Agreement shall be limited to the lower of (i) total Licence Fees received by Actus for User Licences during the 12 months immediately preceding the date on which a claim arises; and (ii) £25,000.
- 11.5 Nothing in the Agreement excludes the liability of either party:
- (a) for death or personal injury caused by Actus's negligence; or
 - (b) for fraud or fraudulent misrepresentation.

12. TERM AND TERMINATION

- 12.1 These Terms and Conditions shall, unless otherwise terminated as provided in this clause 12, commence on the Start Date and shall continue until the end of the Initial Licence Term and thereafter, a new Licence Term shall commence for a further 3 years when agreed. If not agreed the new Licence Term shall automatically renew for successive 12 month periods unless:
- (a) either party notifies the other party of termination, in writing, at least 60 days before either the end of the Initial Licence Term (End Date) or an anniversary of the End Date, in which case the Agreement shall terminate upon the End Date or the anniversary of the End Date as the case may be; or

- (b) otherwise terminated in accordance with the provisions of these Terms and Conditions.

The Initial Licence Term together with any subsequent renewal periods shall constitute the Licence Term.

12.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate an Agreement with immediate effect without liability by giving written notice to the other if:

- (a) the other party fails to pay an amount due under the Agreement by the due date for payment and the amount remains unpaid 30 days after being requested in writing to make such payment; or
- (b) the other party commits a breach of any term of these Terms and Conditions and fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (c) a petition is filed, an order is made or a resolution is passed for the winding up of the other party; an application is made to the court or an order is made for the appointment of an administrator to manage the affairs of the other party; a receiver is appointed over any of the other party's assets or undertaking; a person takes possession of or sells the other party's assets; the other party enters into a voluntary arrangement with its creditors, makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; the other party ceases or threatens to cease trading; the other party takes or suffers any similar or analogous action in any jurisdiction.

12.3 On termination of the Agreement for any reason:

- (a) access to the Actus Software shall cease and all licences granted under the Agreement shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party;
- (c) the Customer is responsible for downloading any personal data that they wish to retain using existing Actus Software functionality;
- (d) Actus will destroy or otherwise dispose of any of the Customer Data in its possession 60 days after termination, unless a data extract is requested 14 days ahead of the termination date. In this event Actus shall use reasonable commercial endeavours to provide the data to the Customer in a CSV file within 60 days of the termination date on condition that the Customer has paid all outstanding fees and charges due to Actus. Actus reserves the right to charge up to £500 per 500 Users, for the administration and provision of said CSV file;
- (e) the accrued rights, remedies, obligations or liabilities of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

13. **FORCE MAJEURE**

Actus shall have no liability to the Customer under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement 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 Actus or any other party), failure

of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, breakdown of plant or machinery, fire, flood or storm.

14. ASSIGNMENT

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

15. THIRD PARTY RIGHTS

These Terms and Conditions do not confirm any rights on any person or party (other than the parties to the Agreement and, where applicable, their successors and permitted assigns) pursuant to the contracts (Rights of Third Parties) Act 1999.

16. NOTICES

- 16.1 Any notice required to be given under these Terms and Conditions shall be in writing and shall be delivered by read receipted email, hand or recorded delivery post to the other party at its address set out in the Agreement or sent by email to the other party's email address as set out in the Agreement (or such substitute address or email address as may have been notified by a party for such purposes).
- 16.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9.00 am on the first Business Day following delivery). A correctly addressed notice sent by recorded delivery post shall be deemed to have been received at the time at which it is signed for. A notice sent by email shall be deemed to have been received at the time the email is sent.

17. GENERAL

- 17.1 If there is an inconsistency between any of the provisions in the main body of these Terms and Conditions and the Agreements, the provisions in these Terms and Conditions shall prevail.
- 17.2 These Terms and Conditions and the Agreement, and any documents referred to therein, constitute the whole Agreement between the parties and supersede any previous arrangement, understanding or contract for services between them relating to the subject matter they cover.
- 17.3 Each of the parties acknowledge and agree that in entering into an Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Agreement or not) relating to the subject matter of the Agreement, other than as expressly set out in these Terms and Conditions.

- 17.4 No variation of these Terms and Conditions shall be effective unless it is in writing and either signed by the parties or there is an exchange of emails between the parties in which it is expressly acknowledged that any Terms and Conditions are being varied.
- 17.5 A waiver of any right under these Terms and Conditions is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 17.6 Nothing in these Terms and Conditions 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.
- 17.7 These Terms and Conditions shall not prevent Actus 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 these Terms and Conditions.
- 17.8 In addition to those provisions which by their nature are intended to survive the termination of an Agreement, clauses 6 (Customer Data), 9 (Intellectual Property Rights), 10 (Confidentiality), 11 (Limitations of Liability) and 18 (Disputes, Governing Law and Jurisdiction) shall survive such termination.

18. DISPUTES, GOVERNING LAW AND JURISDICTION

- 18.1 If any dispute arises in connection with the Agreement, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute being given to the CEDR, the mediator will be nominated by CEDR. To initiate mediation, a party must give notice in writing (ADR notice) to the other party to the dispute requesting mediation. A copy of the request should be sent to the CEDR. Unless otherwise agreed, the mediation will start not later than 28 days after the date of the ADR notice.
- 18.2 Subject to clause 18.1, no party may commence any court proceedings in relation to any dispute arising out of the Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided always that the right to issue proceedings is not prejudiced by a delay.
- 18.3 If a dispute arises which relates to a possible claim with a value in excess of £10,000 a party shall be entitled to issue proceedings without first seeking to resolve the dispute by means of mediation.
- 18.4 The Agreement and any disputes or claims arising out of or in connection with it or its subject matter (including non-contractual disputes or claims) are governed by, and construed in accordance with the law of England, and the parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any such dispute or claim.

SCHEDULE A

PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. PROCESSING BY THE PROVIDER

1.1 DATA CONTROLLER AND DATA PROCESSOR

The Customer shall be the data controller and Actus as the Supplier shall be a data processor.

1.2 SCOPE

Personal data collected and processed by the Customer via the software application of Actus as the Supplier in relation to some or all of the following HR or compliance related activities, including but not limited to:

- 1.2.1** employee performance management and appraisal;
- 1.2.2** talent management; absence management;
- 1.2.3** professional development and feedback;
- 1.2.4** storage of personal data for HR reporting and remuneration;
- 1.2.5** monitoring of regulatory compliance and assurance.

1.3 NATURE

The Supplier's software is being used to process data to allow the Customer to operate an online HR database and Employee Performance Management system for its staff.

1.4 PURPOSE OF PROCESSING

The purpose may include some or all of the following depending on the modules that the Customer has selected:

- 1.4.1** Performance Management and Appraisal;
- 1.4.2** Training & Development;
- 1.4.3** Professional Revalidation;
- 1.4.4** Feedback & Development;
- 1.4.5** SMCR assurance and accreditation;
- 1.4.6** Other related HR reporting and documentation

1.4 DURATION OF THE PROCESSING

For the duration of the agreement.

2. TYPES OF PERSONAL DATA

The following data is likely to be held within the standard Actus system (this list may be subject to update). Due to the nature of the Actus software being customisable, this list is indicative, not exhaustive.

2.1 PERSONAL DATA

- Employee ID
- First Name
- Last Name
- Job Title or Role
- Email address
- Known as
- Hire Date
- Bespoke HRD fields as agreed with the client

2.2 SPECIAL CATEGORY DATA

- Gender
- Salutation (Mr, Mrs, Miss etc)
- Date of Birth
- Disability data (e.g. dyslexia or other conditions that may impact performance)

- Any additional sensitive data contained in notes sections by managers indicating mitigating circumstances arising during performance evaluation meetings, such as health or family issues, study leave, maternity or other family leave, employee relations cases etc.

Other Personal Data includes but may not be limited to:

- Objectives & Measures
- Feedback
- Appraisal data or ratings
- Personal development plan/career aspirations
- Performance improvement plans
- Department
- Location
- Other HRD fields if relevant

3. CATEGORIES OF DATA SUBJECT

- Users of the Actus System
 - HR Admin User
 - Super User
- Customer's employees (may include a variety of workers, such as contractors, fixed term, temps, volunteers, apprentices, interns etc.)