

Terms and Conditions for the Dispute Assist Service (v1)**1. Interpretation**

The following definitions and rules of interpretation apply in these Conditions.

1.1. Definitions:

"Business Day"	a day other than a Saturday, Sunday or public holiday in England, when clearing banks in London are generally open for business;
"Case"	means a Referral which has been accepted by Dispute Assist;
"Charges"	the charges payable by the Customer for the supply of the Services in accordance with clause 7;
"Commencement Date"	means the on which the Contract is formed in accordance with clause 2.2;
"Conditions"	these terms and conditions as amended from time to time in accordance with clause 14.5;
"Contract"	the contract between Dispute Assist and the Customer for the supply of Services in accordance with these Conditions;
"Contract Year"	means a twelve-month period commencing on the Commencement Date, or on any anniversary of the Commencement Date during the Term;
"Customer"	the person or firm who purchases Services from Dispute Assist, as identified in the online submission;
"Customer Complaints Procedure"	has the meaning given in clause 5.7;
"Customer Default"	has the meaning set out in clause 6.4;
"Data Protection Legislation"	means all law, legislation and regulations in force in any relevant jurisdiction in which the party operates from time to time concerning personal data, including any retained European Union laws or directives or any essentially equivalent data protection legislation in the Customer's jurisdiction, and "controller", "personal data" and "special categories of personal data" each have the meaning

	set out in English Data Protection Legislation;
"Deliverables"	means any documents, information or data produced by Dispute Assist for the Customer as part of the Services;
"Dispute Allowance"	means the number of disputes the customer is allowed to have serviced by Dispute Assist without initiating any review of charges. This is 3% of total Relevant Contracts received within a Contract Year;
"Dispute Assist"	means Dispute Assist, trading style of QASSS Ltd;
"End Client"	means the Customer's client to whom the Works in question were provided;
"End Client Details"	has the meaning given in clause 5.4;
"Expert Determination"	means an accredited expert determination or arbitration service as selected by Dispute Assist from time to time;
"Initial Term"	means 36 months from the date of the contract commencing;
"Intellectual Property Rights"	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
"Per Contract Rate"	initially means the sum indicated in the Pricelist as payable by the Customer to

Dispute Assist in respect of each Relevant Contract, as may be amended from time to time in accordance with these Conditions;

"Pre-Contract Information"

means the information provided by the Customer to Dispute Assist before the online submission, and which shall include: the identity of the party that manufactures products comprising the Works; whether the Customer sub-contracts the performance of any element of the Works; and whether the Customer's sales functions are subcontracted or handled otherwise than by persons directly employed by the Customer;

"Pricelist"

means Dispute Assist written Pricelist for the provision of the Services to the Customer;

"QASSS"

means QASSS Ltd, a company incorporated and registered in England and Wales under company number 13041330 and whose registered office is at 3 Piccadilly Place, Manchester, England, M1 3BN;

"Refer"

means that the Customer requests in writing that Dispute Assist performs the mediation and conciliation Services in relation to an End Client complaint in accordance with these Conditions, and "Referral" and "Referred" shall be interpreted accordingly

"Referral Date"

means the day on which the Referral is received by Dispute Assist, provided that where the Referral is received after 17:00 on a Business Day, or on any day other than a Business Day, it shall be deemed to have been received at 09:00 on the following Business Day;

"Relevant Contract"

means a contract between the Customer and an End Client for the performance and/or supply of Works;

"Renewal Term"

has the meaning given in clause 3.2;

"Resolved"

in relation to a Case, means that an acceptable compromise, settlement or

solution has been agreed in principle by both the End Client and the Customer;

"Services"

means the services to be supplied by Dispute Assist to the Customer under the Contract, comprising Dispute Assist' "Dispute Assist" Service, as more particularly described in clause 5;

"Term"

means the Initial Term plus any applicable Renewal Terms;

"VAT"

has the meaning given in clause 7.13; and

"Works"

means the products supplied and/or works performed by the Customer pursuant to a Relevant Contract.

- 1.2. Clause, Schedule and paragraph headings shall not affect the interpretation of these Conditions.
- 1.3. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- 1.7. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8. A reference to **writing** or **written** includes email but does not include fax or telex.
- 1.9. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.10. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
2. **Basis of contract**
 - 2.1. The signature of the Pricelist by the Customer (or the taking of any other step by the Customer consistent with an intention by the Customer to purchase the Services) constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

- 2.2. The Contract shall come into existence upon the earlier of:
 - 2.2.1. Dispute Assist confirming that it accepts the Customer's online submission;
or
 - 2.2.2. Dispute Assist taking any step in the performance of the Services following the offer made by the Customer pursuant to clause 2.1.
- 2.3. The Contract shall have effect on and from the Commencement Date.
- 2.4. Any descriptions, presentations, marketing materials or advertising issued by Dispute Assist, and any descriptions or illustrations contained on Dispute Assist' website or other promotional materials (including without limitation any general description of the Services given in the Pricelist), are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.6. In the event of any inconsistency between the Pricelist and these Conditions, these Conditions shall prevail.

3. **Term**

- 3.1. The Contract shall start on the Commencement Date, and unless terminated earlier in accordance with clause 12, shall continue for a period of two years (the "**Initial Term**").
- 3.2. At the end of the Initial Term, the Contract shall automatically renew for a further period of one-year (a "**Renewal Term**") unless either party gives written notice to the other, not less than thirty (30) days prior to the end of the Initial Term, that it intends the contract to end on the expiry of the Initial Term. Where such a notice is served, the Contract will end at the end of the Initial Term.
- 3.3. The provisions of clause 3.2 shall apply mutatis mutandis at the end of any Renewal Term.

4. **Services**

- 4.1. Dispute Assist shall supply the Services to the Customer pursuant to the Contract.
- 4.2. The Customer accepts that the nature of the Services is a mediation and conciliation service aimed at resolving disputes between the Customer and the End Client fairly. Therefore, although the Customer will be Dispute Assist' sole client for the purposes of the Contract, the Customer accepts that:
 - 4.2.1. Dispute Assist will not owe a duty of care to the Customer to represent its interests in relation to the Case, but will endeavour to act fairly as between the Customer and the End Client;
 - 4.2.2. Dispute Assist will not be acting as a judge, expert or arbitrator in relation to complaint and will not therefore be seeking to arrive at an objective factual ruling in relation to any complaint;

- 4.2.3. the aim of the Services is for Dispute Assist to attempt to identify potentially acceptable compromises to the issues between the Customer and the End Client, and in making proposals for settlement shall not be deemed to be advising the Customer on whether the settlement proposed is the most commercially advantageous settlement available to the Customer. The Customer must undertake its own assessment of the commercial and legal merits of any settlement proposal;
- 4.2.4. Dispute Assist will not usually seek to independently verify the information provided by the parties during the course of any Case; and
- 4.2.5. Dispute Assist does not guarantee that it will be possible to reach a settlement in relation to any given case.
- 4.3. Dispute Assist shall use reasonable endeavours perform the Services and to resolve any Case promptly but does not commit to any particular timescales or deadlines (and where provided, timescales or deadlines are estimates only) and time shall not be of the essence for performance of the Services.
- 4.4. Dispute Assist reserves the right to amend the Services, or how they are delivered, if necessary or desirable to comply with any change to applicable law, regulatory requirement or industry guidance.
- 4.5. Dispute Assist warrants to the Customer that the Services will be provided using reasonable care and skill. All other warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 4.6. Although the Services are designed to help the Customer fulfil its obligations under applicable law as regards the provision of alternative dispute resolution, the Customer agrees that it remains responsible for its own compliance with any applicable regulatory standards, and for satisfying itself that the Services comply with applicable law. Dispute Assist gives no warranty that the Services will discharge the Customer's regulatory obligations either alone or in combination with other actions by the Customer.

5. **Services Description**

- 5.1. The implementation of the Services will involve those steps and actions indicated on the Dispute Assist website or in marketing or information materials, and the Customer agrees to promptly undertake at its own cost and to a high standard any steps or actions as indicated in the Pricelist or as requested by Dispute Assist in order to help Dispute Assist implement the Services. Where any proposal indicates that the Services will operate based on a level of integration between the information technology systems of Dispute Assist and the Customer, the Customer agrees that it is obliged to maintain such inter-operability throughout the Term in a functional and effective state and may not to make any changes to its systems which may impact Dispute Assist without Dispute Assist' written consent.
- 5.2. The Customer agrees that as soon as practicable following the formation of a Relevant Contract (and in any event within not more than 3 Business Days following the formation of any Relevant Contract) it will notify Dispute Assist in writing of the formation of the Relevant Contract and provide the End Client Details to Dispute Assist. For this purpose, the format and method of transfer of the End Client Details may be specified by Dispute Assist acting reasonably.

- 5.3. Dispute Assist shall not be obliged to provide the Services in relation to contracts entered by the Customer which:
 - 5.3.1. the Customer fails to notify to Dispute Assist in format and in the timescales required by clause 5.2; or
 - 5.3.2. which were entered by the Customer before the Commencement Date.
- 5.4. The "**End Client Details**" shall mean, in respect of each Relevant Contract, the following information:
 - 5.4.1. the End Client's name;
 - 5.4.2. the End Client's email address;
 - 5.4.3. the End Client's telephone number;
 - 5.4.4. the End Client's post code;
 - 5.4.5. the post code of the address at which the Works were performed, if different to the above;
 - 5.4.6. the details of the Works supplied under the Relevant Contract;
 - 5.4.7. the total value of charges payable by the End Client under the Relevant Contract; and
 - 5.4.8. the date on which the Relevant Contract was formed.
- 5.5. The Customer agrees that Dispute Assist will be entitled to provide the Services in respect of all contracts formed by the Customer in or related to the fields of home improvement and renewable energy and agrees to abide by the provisions concerning Relevant Contracts in respect of all such contracts.
- 5.6. Following notification by the Customer under clause 5.1, Dispute Assist will use its reasonable endeavours to contact the End Client to give them details of the Dispute Assist package.
- 5.7. The Customer agrees that it shall have in place from the Commencement Date and shall maintain throughout the Term a procedure to handle complaints from End Clients in relation to the Works (the "**Customer Complaints Procedure**"). For this purpose, a "complaint" shall mean any expression of dissatisfaction by the End Client with the Works or the fulfilment of the Relevant Contract by the Customer.
- 5.8. The Customer agrees that:
 - 5.8.1. the Customer Complaints Procedure will be of a standard representative of good practice in the Customer's industry for such procedures; and
 - 5.8.2. the Customer Complaints Procedure will be operated by the Customer in good faith and with reasonable skill and care; and
 - 5.8.3. it will make a genuine and concerted attempt to resolve the End Client's complaint on reasonable terms within twenty-eight (28) days of the date of the complaint.

- 5.9. Where an End Client contacts Dispute Assist with a complaint without having first engaged with the Customer Complaints Procedure, Dispute Assist will direct them to contact the Customer under the Customer Complaints Procedure.
- 5.10. Where the Customer has been unable to resolve a complaint within twenty-eight (28) days of the date of the complaint, the Customer shall immediately Refer the complaint.
- 5.11. Where the Customer has made genuine efforts to resolve a complaint pursuant to the Customer Complaint Procedure, but, despite twenty-eight (28) days having not yet elapsed since the date of the complaint believes that it will be unable to make further progress towards resolving the complaint, it may request to Refer the complaint before the usual time period has elapsed. The Customer shall provide such evidence as is reasonably necessary to satisfy Dispute Assist that the Customer has made appropriate efforts to deal with the complaint. Dispute Assist shall be entitled to decline any Referral under this clause where it is not satisfied that the Customer has exhausted all reasonable resolution routes.
- 5.12. The Customer may also Refer a complaint which it has in relation to conduct of the End Client or their compliance with the terms of the Relevant Contract once it has made reasonable attempts to resolve the issue directly with the End Client.
- 5.13. When making a Referral, the Customer shall:
 - 5.13.1. notify Dispute Assist in writing of the complaint and all the relevant details thereof, including providing details the attempts made to resolve it;
 - 5.13.2. notify Dispute Assist of any change to the End Client Details; and
 - 5.13.3. provide Dispute Assist with copies of all relevant documents and correspondence held by the Customer.
- 5.14. In relation to each Case, stage one of the Services will last for a period starting on the Referral Date and ending seven (7) days later.
- 5.15. In stage one, Dispute Assist will promptly attempt to contact the End Client and will request that the End Client verifies their identity using the End Client Data as a reference. Dispute Assist will then begin attempts to broker a settlement of the complaint. In doing so, Dispute Assist shall employ such means as it thinks fit in its professional discretion.
- 5.16. Where the Case relates to physical defects with the Works, Dispute Assist will attempt to obtain video or picture evidence of the issue, or where deemed appropriate by Dispute Assist, conduct a physical inspection. Dispute Assist will use its reasonable endeavours to determine as far as it is able the root cause of any physical defect and will advise the parties of its preliminary conclusions on the basis of the facts available to it.
- 5.17. During stage one, Dispute Assist shall not be obliged to ask the parties for written evidence in support of their position on the Case but may do so where it deems that it is appropriate.
- 5.18. Dispute Assist will make recommendations to the parties on potentially acceptance settlement options based on its good-faith perceptions of the merits of the Case and the parties' respective positions.

- 5.19. Where the Case is not Resolved within seven days of the Referral Date, Dispute Assist will request formal written evidence from the parties as to their position in relation to the Case. The Customer agrees to comply with such a request promptly.
- 5.20. Dispute Assist will continue to make efforts to resolve the Case and to broker a settlement which is acceptable to the parties throughout stage two.
- 5.21. Where a potential settlement to the complaint is agreed by both parties at any stage, Dispute Assist will propose the form of a written agreement which attempts to implement the terms of that settlement. The Customer accepts that Dispute Assist is not providing the Customer with legal advice and makes no warranty or representation that any such written agreement is legally robust. The Customer agrees that it is responsible to have the terms of any written settlement agreement reviewed by a solicitor before entering it, and that Dispute Assist will not be liable for any error in or omission from such agreement.
- 5.22. Where the Case is not Resolved within eighty (80) days of the Referral Date, then Dispute Assist will:
 - 5.22.1. provide each party with an electronic copy of its file in relation to the Case;
 - 5.22.2. provide each party with access to Expert Determination
- 5.23. Except where clause 7.8 applies, to the extent that Dispute Assist determines, in its discretion, that it is necessary to commission expert witness reports, surveys or other third party inputs in order to assist with the Case, it will bear the cost of such action.
- 5.24. Once Dispute Assist has referred the parties to Expert Determination in accordance with clause 5.22, it will be deemed to have completed the Services in respect of the Case and shall not be obliged to provide any further assistance to either party.
- 5.25. Dispute Assist agrees to provide a monthly report to the Customer (in a format determined by Dispute Assist from time to time) detailing basic information relating to the performance of the Services, as detailed in Clause 5.
- 5.26. Other than as expressly set out in these Conditions, Dispute Assist shall be free to carry out the Services as it sees fit in its reasonable professional discretion.

6. **Customer's obligations**

- 6.1. The Customer represents, warrants and undertakes to Dispute Assist that the Pre-Contract Information it has provided to Dispute Assist is complete, accurate and up-to-date and agrees to inform Dispute Assist immediately in writing if this ceases to be the case.
- 6.2. The Customer shall:
 - 6.2.1. ensure that the information about the Customer in the online submission is complete and accurate;
 - 6.2.2. co-operate with Dispute Assist in all matters relating to the Services; and
 - 6.2.3. promptly provide Dispute Assist with such information and materials as Dispute Assist may reasonably require in order to supply the Services and

ensure that such information is complete and accurate in all material respects.

- 6.3. The Customer agrees that, where it has made a Referral to Dispute Assist, that it shall on an ongoing basis promptly engage with Dispute Assist in a good faith attempt to resolve the Case and will take a reasonable and proportionate approach to assessing any settlement Pricelist.
- 6.4. If Dispute Assist's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (a "**Customer Default**"):
 - 6.4.1. without limiting or affecting any other right or remedy available to it, Dispute Assist shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Dispute Assist's performance of any of its obligations;
 - 6.4.2. Dispute Assist shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Dispute Assist's failure or delay to perform any of its obligations as set out in this clause 6.4; and
 - 6.4.3. the Customer shall reimburse Dispute Assist on written demand for any costs or losses sustained or incurred By Dispute Assist arising directly or indirectly from the Customer Default.

7. **Charges**

- 7.1. The Charges for the Services are presented in the Pricelist and are charged as a Per Contract Rate.
- 7.2. Where the Customer elects to receive additional or enhanced reporting, as detailed in the Pricelist, this shall be charged at the rate specified in the Pricelist.
- 7.3. The liability for the payment of the Charges shall be the Customer's alone. To the extent that the Customer chooses to recharge any element of the Charges to the End Client under the Relevant Contract, that will be a separate matter and the Customer's obligations under this clause will not be dependent on the End Client meeting its own payment obligations.
- 7.4. At any time Dispute Assist shall be entitled to give the Customer written notice of a change to the Charges and/or the Annual Dispute Allowance to apply from a date no sooner than 3 months in advance. Where Dispute Assist does not give such a notice, or where Dispute Assist indicates that the Charges will be unchanged, the provisions of clause 3.2 will apply to determine whether the Contract is extended. Where Dispute Assist serves notice indicating that the Charges will increase or that the Annual Dispute Allowance will decrease with effect from the dated provided no earlier than 3 months in advance, the Customer shall (in addition to the rights in clause 3.2) be entitled to terminate the Contract by giving Dispute Assist fourteen (14) days' notice in writing. Where the Customer exercises this right to terminate, any proposed price increase shall not have effect. Where the Customer fails to terminate the Contract under this clause or clause 3.2, it will be deemed to have accepted the increase in the Charges and/or decrease in the Annual Dispute Allowance, which will apply from the date stated

no sooner than 3 months in advance. The provisions of this clause shall apply mutatis mutandis in relation to the expiry of any Renewal Term.

7.5. Where:

7.5.1. it later appears to Dispute Assist acting reasonably that the Pre Contract Information is no longer accurate, complete or up to date (including where it was not at the time of submission accurate, complete or up to date); and/or

7.5.2. where the number of Cases referred by the Customer has exceeded the Annual Dispute Allowance,

then the Customer accepts that Dispute Assist will face additional unbudgeted costs of performance and shall be entitled to take either or both of the steps in clause 7.6 below.

7.6. Where this clause applies, Dispute Assist shall be entitled (without prejudice to its other rights and remedies) to:

7.6.1. increase the Per Contract Rate by an amount which in Dispute Assist in its reasonable discretion adjudges will compensate it for the additional costs of performance it has incurred to date and may incur in the future by reason of the inaccuracy of the Pre-Contract Information and/or the Annual Dispute Allowance being exceeded; and/or

7.6.2. to charge the Customer an additional one-off fee which in Dispute Assist in its reasonable discretion adjudges fairly reflects the increased costs and expenses it will face by reason of the inaccuracy of the Pre-Contract Information and/or the Annual Dispute Allowance being exceeded.

7.7. The change in the Charges or additional Charges under clause 7.6 do not need to be agreed or accepted by the Customer. For the purposes of clauses to 7.6, the Customer agrees that DISPUTE ASSIST' assessment of:

7.7.1. whether the Pre Contract Information is inaccurate; or

7.7.2. the level of additional costs and expenses Dispute Assist may suffer,

shall, in the absence of manifest error or fraud, be final and binding on the Customer.

7.8. Where Dispute Assist agrees to provide the Services in respect of Case to which clause 5.3 applies, Dispute Assist shall be entitled to charge for the Services at its usual list price for such services payable by customers who do not subscribe to a "Dispute Assist" package. In addition, Dispute Assist shall be entitled to re-charge to the Customer at cost all third-party costs and expenses incurred by Dispute Assist in the performance of such Services, including surveyors' fees and expert witness fees. Additionally, where it is necessary to refer such a case to Expert Determination, the Customer will bear all of the Ombudsman's fees handling the matter.

7.9. Without prejudice to any of the foregoing, Dispute Assist shall be entitled to increase any of the Charges immediately by notice to the Customer where Dispute Assist' own costs of performing the Services are increased by any factor outside of Dispute Assist' reasonable control including a change in applicable law or regulation relevant to the provision of the Services or increases in taxes and duties. Such a change in the

Charges need not be agreed by the Customer but such increases shall be limited to the amount reasonably necessary to reflect any such increased cost to Dispute Assist (as determined by Dispute Assist in its reasonable discretion).

- 7.10. Dispute Assist shall invoice the Customer at such intervals as it sees fit from time to time. Unless otherwise notified to the Customer by Dispute Assist, Dispute Assist will invoice the Customer on a monthly basis in arrears.
- 7.11. The Customer shall pay each invoice submitted by Dispute Assist:
- 7.11.1. within seven (7) days of the date of the invoice, except where Dispute Assist has exercised the right in clause 7.12; and
 - 7.11.2. in full and in cleared funds to a bank account nominated in writing by Dispute Assist, and
- time for payment shall be of the essence of the Contract.
- 7.12. Dispute Assist may at any time on written notice require all outstanding and future invoices to be paid immediately on presentation.
- 7.13. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by Dispute Assist to the Customer, the Customer shall, on receipt of a valid VAT invoice from Dispute Assist, pay to Dispute Assist such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 7.14. If the Customer fails to make a payment due to Dispute Assist under the Contract by the due date, then, without limiting Dispute Assist's remedies under clause 12, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.14 will accrue each day at eight per cent (8%) a year above the Bank of England's base rate from time to time, but at eight per cent (8%) a year for any period when that base rate is below zero.
- 7.15. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. Remedial Works

- 8.1. Where the settlement of a case involves the performance of additional or remedial works, Dispute Assist may offer to facilitate the provision of such works on behalf of the Customer through its subcontractor network.
- 8.2. Where Dispute Assist agrees to provide such remedial or additional work on behalf the Customer, it is agreed that:
- 8.2.1. such works will be governed Dispute Assist' standard terms and conditions for the management of works, which shall apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing; and

8.2.2. Dispute Assist shall be entitled to charge the Customer in respect of the performance of such works in a sum equivalent to the price charged by Dispute Assist' subcontractors plus an administration charge of ten per cent (10%), which sum Dispute Assist will confirm in writing.

9. **Intellectual property rights**

- 9.1. All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Dispute Assist.
- 9.2. Dispute Assist grants to the Customer or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the Term to use the Deliverables in its ordinary business activities.
- 9.3. The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 9.2.
- 9.4. The Customer grants Dispute Assist a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to Dispute Assist for the term of the Contract for the purpose of providing the Services to the Customer.
- 9.5. The Customer agrees to the Branding Guidelines set out by Dispute Assist, when using Dispute Assist marketing assets. The Customer agrees that in order to use Dispute Marketing assets, it must ensure it is referring all Relevant Contracts to avoid misrepresentation to the End Client.

10. **Data protection**

- 10.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 10.2. To the extent that the End Client Details or any other information held from time to time By Dispute Assist about the End Clients comprises personal data, the parties acknowledge that for the purposes of the Data Protection Legislation, the Customer will be the controller and Dispute Assist will be the processor.
- 10.3. The parties agree that the following is an accurate description of the particulars of the processing which is intended to take place under the Contract, and each party agreed to abide by any obligation indicated below:

The subject matter of the processing	The carrying out of a mediation and conciliation service by Dispute Assist for the Customer
The duration of the processing	The term of the Contract and for any subsequent period during which Dispute Assist processes personal data which is subject to the Contract.
The nature and purpose of the processing	Holding personal data related to End Clients in order to be able to verify a potential future complaint by them, and in the event of a complaint to use personal

	data in relation to the End Client to communicate with them in the provision of the Services.
The type of personal data being processed	Name, address, telephone number and email address of End Clients, ancillary details which may be supplied by the End Client during the course of a Case.
The categories of data subjects	End Clients of the Customer, or their representatives as appropriate.
The obligations and rights of the data controller	As set out in the Contract and the Data Protection Legislation in relation to its role as data controller.
The instructions of the data controller	To process and store the personal data so as to enable Dispute Assist to provide the Services as envisaged in the Contract.

- 10.4. Without prejudice to the generality of clause 10.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Dispute Assist for the duration and purposes of the Contract.
- 10.5. Without prejudice to the generality of clause 10.1, Dispute Assist shall, in relation to any personal data processed in connection with the performance by Dispute Assist of its obligations under the Contract:
- 10.5.1. process that personal data only on the documented instructions of the Customer unless Dispute Assist is required by applicable law to otherwise process that personal data, and where Dispute Assist believes it is required to process otherwise than in accordance with the Customer's instruction, Dispute Assist shall promptly notify the Customer of this before performing the processing required by applicable law unless those applicable laws prohibit Dispute Assist from so notifying the Customer;
 - 10.5.2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - 10.5.3. ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
 - 10.5.4. not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer (not be to unreasonably

withheld or delayed) has been obtained and the following conditions are fulfilled:

- 10.5.4.1. the Customer or Dispute Assist has provided appropriate safeguards in relation to the transfer;
 - 10.5.4.2. the data subject has enforceable rights and effective legal remedies;
 - 10.5.4.3. Dispute Assist complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - 10.5.4.4. Dispute Assist complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- 10.5.5. assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 10.5.6. notify the Customer without undue delay on becoming aware of a personal data breach;
 - 10.5.7. at the written direction of the Customer, delete or return personal data and copies to the Customer on termination or expiry of the agreement unless required by applicable law to store the personal data;
 - 10.5.8. maintain complete and accurate records and information to demonstrate its compliance with this clause 10 and allow for audits by the Customer or the Customer's designated auditor of such records and information (provided that Dispute Assist may charge for its time spent co-operating in any such audit in accordance with the Reference Charges); and
 - 10.5.9. inform the Customer if, in the opinion of Dispute Assist, an instruction infringes the Data Protection Legislation.
- 10.6. The Customer hereby consents to Dispute Assist appointing one or more sub-processors in relation to personal data handled by DISPUTE ASSIST under the Contract, provided that, Dispute Assist shall notify the Customer before the appointment, addition or replacement of any sub-processor and shall give the Customer the opportunity to object to such appointment. Any objection by the Customer shall be considered by Dispute Assist before deciding whether to proceed with the appointment.
 - 10.7. The Customer acknowledges that Dispute Assist will be entitled to retain a database of pseudonymised, or anonymised data drawn from personal data processed by Dispute Assist for the Customer under the Contract, and that such data will be owned by Dispute Assist absolutely and will not be subject to the provisions of the Contract related to the processing of personal data.

11. **Limitation of liability**

11.1. Nothing in the Contract limits or excludes the liability of Dispute Assist for:

- 11.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 11.1.2. fraud or fraudulent misrepresentation;
- 11.1.3. any other matter for which liability cannot be properly excluded or limited at law.

11.2. Subject to clause 11.1, Dispute Assist shall not be liable to the Customer for:

- 11.2.1. loss of profits; or
- 11.2.2. loss of business; or
- 11.2.3. depletion of goodwill and/ or similar losses; or
- 11.2.4. loss of anticipated savings; or
- 11.2.5. loss of contract; or
- 11.2.6. loss of use; or
- 11.2.7. loss or corruption of data or information; or
- 11.2.8. special, indirect, consequential or pure economic loss, costs, damages, charges or expenses,

arising out of or in connection with the performance or contemplated performance of the Contract or the Services whether caused by tort (including negligence), breach of contract (including under any warranty), breach of statutory duty or otherwise) and whether or not foreseeable.

11.3. Subject to clauses 11.1 and 11.2, Dispute Assist's total liability to the Customer in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or arising out of or in connection with the Contract or the performance or contemplated performance of the Services (including any liability for the acts or omissions of its employees) shall in any given Contract Year be limited to a sum which is equal to the total Charges paid by Customer in the preceding Contract Year (or pro-rata in that Contract Year in the case of claims made in the first Contract Year).

11.4. Subject to clauses 11.1, 11.2 and 11.3, unless the Customer notifies Dispute Assist that it intends to make a claim in respect of an event within the notice period, Dispute Assist shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire six (6) months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

11.5. This clause 11 shall survive the termination of this Agreement.

12. **Termination**

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

12.1.1. the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that party being notified in writing to do so;

12.1.2. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

12.1.3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

12.1.4. the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

12.2. Without affecting any other right or remedy available to it, Dispute Assist may terminate the Contract with immediate effect by giving written notice to the Customer if:

12.2.1. the Customer fails to pay any amount due under the Contract on the due date for payment; or

12.2.2. the Customer fails, in Dispute Assist' reasonable opinion, to comply with its obligation under clauses 5.8 or 6.3.

12.3. Without affecting any other right or remedy available to it, Dispute Assist may suspend the supply of Services under the Contract or any other contract between the Customer and Dispute Assist if:

12.3.1. the Customer fails to pay any amount due under the Contract on the due date for payment;

12.3.2. the Customer becomes subject to any of the events listed in clause 12.1.3 or clause 12.1.4, or Dispute Assist reasonably believes that the Customer is about to become subject to any of them; and

12.3.3. Dispute Assist reasonably believes that the Customer is about to become subject to any of the events listed in clause 12.1.2.

13. **Consequences of termination**

13.1. On termination or expiry of the Contract:

13.1.1. the Customer shall immediately pay to Dispute Assist all Of DISPUTE ASSIST's outstanding unpaid invoices and interest and, in respect of

Services supplied but for which no invoice has been submitted, Dispute Assist shall submit an invoice, which shall be payable by the Customer immediately on receipt;

- 13.1.2. Dispute Assist will be immediately released of the obligation to perform the Services, regardless of whether Customer has already paid the Per Contract Rate in relation to the Relevant Contract which is or becomes the subject of a complaint.
- 13.2. Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 13.3. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

14. **General**

- 14.1. **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

14.2. **Assignment and other dealings.**

- 14.2.1. Dispute Assist may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 14.2.2. The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Dispute Assist.

14.3. **Confidentiality.**

- 14.3.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 14.3.2.
- 14.3.2. Each party may disclose the other party's confidential information:
 - 14.3.2.1. to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 14.3; and
 - 14.3.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 14.3.3. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 14.4. **Entire agreement.**
- 14.4.1. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 14.4.2. Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 14.4.3. Nothing in this clause shall limit or exclude any liability for fraud.
- 14.5. **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 14.6. **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.7. **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Contract deleted under this clause 14.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 14.8. **Notices.**
- 14.8.1. Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- 14.8.1.1. delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 14.8.1.2. sent by email to any address regularly used by that party in relation to the Contract or the Services (provided in the case of Dispute Assist that email address is the account belonging to a statutory director of Dispute Assist).
- 14.8.2. Any notice shall be deemed to have been received:

- 14.8.2.1. if delivered by hand, at the time the notice is left at the proper address;
 - 14.8.2.2. if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting;
 - 14.8.2.3. if sent if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 14.8.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 14.8.3. This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

14.9. Third party rights.

- 14.9.1. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 14.9.2. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

14.10. **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

14.11. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.