

CashCalc

TERMS OF BUSINESS

- (1) Cash Calc Ltd incorporated and registered in England and Wales with company number 08909219 whose registered office is at 12 Waterside Court, Albany Street, Newport NP20 5NT (**CashCalc**)
- (2) The business entity (sole trader/partnership/limited liability partnership/company) which, on accepting this Agreement, will be registered to use CashCalc's service (**Customer**).

BACKGROUND

- (A) CashCalc has developed software applications and platforms which it makes available to subscribers via the Website on a monthly payment basis for the purpose of cash flow modelling and financial planning.
- (B) The Customer wishes to use CashCalc's service.
- (C) CashCalc has agreed to provide and the Customer has agreed to take and, other than in relation to a Trial User package, pay for CashCalc's service subject to these terms and conditions.

AGREED TERMS

1. INTERPRETATION

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

Adviser: any CF30 (or equivalent) adviser being an employee, agent or independent contractor of the Customer.

Authorised User: each Group Premium users (comprising an Adviser and a Paraplanner).

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 14.5.

Customer Data: the data inputted by the Authorised Users, or CashCalc for the purpose of using the Services or facilitating the Customer's use of the Services.

Data Protection Legislation: (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

Effective Date: the date on which an e-mail is sent by CashCalc to the Customer containing the password(s) permitting the Customer to gain access to the Services via the Website.

Generic Terms: the terms applicable to all of Trial Users, Premium Users and Group Premium users as set out in clauses 2 to 8 (inclusive), 12 to 29 (inclusive) below.

Group Master: Main account holder in the service Group Premium.

Group Premium User: any Customer subscribing to CashCalc's Group Premium package on the Website.

Group Premium User Terms: those specific terms applicable to Group Premium Users set out in clause 11 below.

Paraplanner: means, where applicable, the individual supporting each Adviser (the aggregate of which – one Adviser and One Paraplanner – constitutes one Authorised User).

Premium Users: any Customer subscribing to CashCalc's Premium package on the Website including any relevant Authorised Users.

Premium User Terms: those specific terms applicable to Premium Users set out in clause 10 below.

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Registered Users: those employees, agents and independent contractors of the Customer whose names are registered with CashCalc as having access to the Services.

Services: the access provided by CashCalc to the Customer to CashCalc's CashCalc product under this agreement via the Website.

Software: the online software applications provided by CashCalc as part of the Services.

Subscription Fees: the subscription fees payable by the Customer to CashCalc for the User Subscriptions set out on the Website.

Subscription Term: has the meaning given in clause 17.1.

Trial User: any Customer carrying out a free 28 day trial on the Website, such use being of limited scope to the Services as prescribed by CashCalc from time to time.

Trial User Terms: those specific terms applicable to Trial Users set out in clause 9 below.

User Subscriptions: the user subscriptions purchased by the Customer which entitle Registered Users to access and use the Services.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Website: www.CashCalc.co.uk or such other website address as may be notified to the Customer from time to time.

- 1.2 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

2. USER SUBSCRIPTIONS

- 2.1 CashCalc grants to the Customer a non-exclusive, non-transferable right to use the Services during the Subscription Term solely for the Customer's business operations, subject to these terms.
- 2.2 Unless otherwise agreed with CashCalc, the Customer is to be an entity authorised and regulated by the Financial Conduct Authority (or any similar entity or replacement regulator).
- 2.3 In relation to the Registered Users, the Customer undertakes that:
- (a) the maximum number of Registered Users it authorises to access and use the Services shall be as follows:
 - (i) *Trial User* – unlimited for the duration of the trial subscription but to include the initial Registered User.
 - (ii) *Premium* – one Adviser (also being a Registered User).
 - (iii) *Group Premium* – the number of Advisers paid for by the Customer to CashCalc with the equivalent number of Paraplanners.
 - (b) it will not allow or suffer any User Subscription to be used by more than one Registered User unless it has been reassigned to another Registered User, in which case the prior Registered User shall no longer have any right to access or use the Services;
 - (c) each Registered User shall keep secure passwords for their use of the Services, that such password shall be changed no less frequently than quarterly and that each Registered User shall keep their passwords confidential;
 - (d) it shall maintain a written, up to date list of current Registered Users and provide such list to CashCalc within 5 Business Days of CashCalc's written request at any time or times;
 - (e) it shall permit CashCalc to audit the Services in order to establish the name and password of each Registered User. Such audit may be conducted no more than once per quarter, at CashCalc's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
 - (f) if any of the audits referred to in clause 2.3(e) reveal that any password has been provided to any individual who is not a Registered User, then without prejudice to CashCalc's other rights, the Customer shall promptly disable such passwords and CashCalc shall not issue any new passwords to any such individual; and
 - (g) if any of the audits referred to in clause 2.3(e) reveal that the Customer has underpaid Subscription Fees to CashCalc, then without prejudice to CashCalc's other rights, the Customer shall pay to CashCalc an amount equal to such underpayment as calculated in accordance with the prices set out in the Website within 10 Business Days of the date of the relevant audit.
- 2.4 The name provided for any Registered User must be that which resembles the name of a real person and not that of any company, location or other term used to denote a group of individuals or of a generic nature. Any name CashCalc to be conflicting with this policy can and will be changed by CashCalc without prior notice and any subsequent requests to change the name associated with this agreement must be approved by Cash Calc.

2.5 Any email address provided by the Customer or any Registered User must be that or a real email address and one which CashCalc is able to contact the Customer or Registered User (as appropriate) on. Any email address CashCalc determines to be conflicting with this policy will be reviewed and may result in termination of the Service to the Customer.

2.6 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services 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; or
- (f) in a manner that is otherwise illegal or causes damage or injury to any person or property;

and CashCalc reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.7 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (i) and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software (as applicable) in any form or media or by any means; or
 - (ii) 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 Services in order to build a product or service which competes with the Services; or
- (c) use the Services to provide services to third parties; or
- (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Registered Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 2.

2.8 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify CashCalc.

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

2.10 The Customer shall ensure that these terms are brought to the attention of all Registered Users and shall be responsible for the actions of all Registered Users in relation to the Services.

3. SERVICES

3.1 CashCalc shall, during the Subscription Term, provide the Services to the Customer on and subject to these terms.

3.2 CashCalc shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

- (a) planned maintenance carried out during any maintenance window; and
- (b) unscheduled maintenance performed outside Normal Business Hours, provided that CashCalc has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.

4. CUSTOMER DATA

4.1 The Customer shall own all right, 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.

4.2 CashCalc shall follow its archiving procedures from time to time for Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for CashCalc to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by CashCalc. CashCalc shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by CashCalc to perform services related to Customer Data maintenance and back-up).

4.3 CashCalc shall, in providing the Services, comply with its privacy policy relating to the privacy of the Customer Data available at the Website, as such may be amended from time to time by CashCalc in its sole discretion.

5. DATA PROTECTION

5.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

5.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and CashCalc is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation).

5.3 Without prejudice to the generality of clause 5.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to CashCalc for the duration and purposes of this agreement.

- 5.4 Without prejudice to the generality of clause 5.1, CashCalc shall, in relation to any Personal Data processed in connection with the performance by CashCalc of its obligations under this agreement:
- (a) process that Personal Data only on the written instructions of the Customer unless CashCalc is required by the laws of any member of the European Union or by the laws of the European Union applicable to CashCalc to process Personal Data (**Applicable Laws**). Where CashCalc is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, CashCalc shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit CashCalc from so notifying the Customer;
 - (b) 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);
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (d) not transfer any Personal Data outside of the European Economic Area unless the following conditions are fulfilled:
 - (i) the Customer or CashCalc has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) CashCalc complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) CashCalc complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - (e) 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;
 - (f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
 - (g) 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 Applicable Law to store the Personal Data; and
 - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 5.
- 5.5 The Customer does not consent to CashCalc appointing any third party processor of Personal Data under this agreement.

5.6 Either party may, at any time on not less than 30 days' notice, revise this clause 5 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

6. THIRD PARTY PROVIDERS

The Customer acknowledges that the 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 and that it does so solely at its own risk. CashCalc makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not CashCalc. CashCalc recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. CashCalc does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

7. CASHCALC'S OBLIGATIONS

7.1 The information displayed on the Service (save the home pages and various other parts of the site containing generic information) is based on information entered by the Registered User(s). CashCalc makes no representation or warranty, whether express or implied, as to its accuracy, or completeness, timeliness or fitness for any purpose to which the Customer may wish to use it for. No independent verification monitoring or screening has been undertaken in respect of the information contained on the Service and each Registered User shall be solely responsible for verifying its accuracy and suitability. CashCalc does not endorse or accept responsibility for any recommendations, views opinions and advice expressed based on the Service.

7.2 CashCalc undertakes that the Services will be performed with reasonable skill and care.

7.3 The undertaking at clause 7.2 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to CashCalc's instructions, or modification or alteration of the Services by any party other than CashCalc or CashCalc's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, CashCalc will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.2. Notwithstanding the foregoing, CashCalc:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services and/or the information obtained by the Customer through the Services will meet 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 Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

- 7.4 This agreement shall not prevent CashCalc from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.
- 7.5 CashCalc warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

8. CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) provide CashCalc with all necessary co-operation in relation to this agreement;
- (b) comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner;
- (d) ensure that the Registered Users use the Services in accordance with the terms and conditions of this agreement and shall be responsible for any Registered User's breach of this agreement; and
- (e) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to CashCalc's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

9. TRIAL USER TERMS

- 9.1 Any trial use shall last for the duration of the 28 day term unless terminated earlier by CashCalc in accordance with these terms or the Customer upgrades its user status.
- 9.2 The Customer shall be the entity set out in "Company Name" when registering and the individual providing his or her email address shall be the initial Registered User. Any employee, agent or independent contractor shall be entitled to use such part of the Service as CashCalc gives Trial Users access to from time to time.
- 9.3 Any additional Trial User terms shall be set out on the Website from time to time.
- 9.4 The terms in this clause 9 shall apply in addition to the Generic Terms.

10. PREMIUM USER TERMS

- 10.1 Premium Users shall have full access to the Services, subject to these terms.
- 10.2 Premium Users shall be restricted to the named Registered User. If a Customer requires more than one Registered User then it needs to upgrade to a Group Premium account.
- 10.3 The terms in this clause 10 shall apply in addition to the Generic Terms.

11. GROUP PREMIUM USER TERMS

- 11.1 Group Premium Users shall have full access to the Services, subject to these terms.
- 11.2 Group Premium Users shall require a Group Master, who needs to be a Registered User.
- 11.3 Group Premium subscriptions are required for any Authorised User(s) to have access to the Services.
- 11.4 The role of the Group Master shall be to add on any additional Registered Users (including Authorised Users), set visibility settings for all Registered Users and review all management information generated by the Service.
- 11.5 The terms in this clause 11 shall apply in addition to the Generic Terms.

12. CHARGES AND PAYMENT

- 12.1 The applicable Subscription Fees from time to time are set out on the Website.
- 12.2 Commencing on the Effective Date and monthly thereafter the Customer shall pay to Cash Calc by direct debit the Subscription Fee plus VAT for its use of the Services or, in the case of any Group Premium subscription, per Authorised User. Cash Calc has appointed the Direct Debit company, GoCardless Limited (<https://gocardless.com>), to collect payments and Cash Calc Limited will be shown on the Customer's bank statement.
- 12.3 If Cash Calc has not received payment within one calendar month after the due date, and without prejudice to any other rights and remedies of Cash Calc:
 - (a) Cash Calc may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services or Licensed Program and Cash Calc shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8% over the then current base lending rate of Barclays Bank Plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 12.4 All amounts and fees referred to in these terms and conditions:
 - (a) are non-cancellable and non-refundable;
 - (b) are exclusive of Value Added Tax (VAT), which shall be added to Cash Calc's invoice(s) at the appropriate rate.
- 12.5 Cash Calc shall be entitled to increase the Subscription Fees at any time without prior notice but must provide no less than 28 days' prior notice to existing Customers (other than Trial Users) and these terms and conditions shall be deemed to have been amended accordingly.

12.6. In relation to the service Group Premium, by adding an additional login to its Cash Calc account, the Customer recognises that its subscription fee will increase by an amount set out by Cash Calc on the Website.

- (a) CashCalc reserves the right to cancel without prior warning additional logins created by the Customer and/or the Group Master, upon failure to authorise the Customer's new subscription fee after adding an additional login with its Service Group Premium within 7 days.
- (b) Any effort to lower the cost of a Group Premium account by attempting to hide, lower and/or manipulate the number of Advisers using Cash Calc within a Group Premium account will result in an immediate suspension of service without prior notice.

13. PROPRIETARY RIGHTS

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

13.2 CashCalc confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

14. CONFIDENTIALITY AND COMPLIANCE WITH POLICIES

14.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

- (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.

14.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

14.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

- 14.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 14.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute CashCalc's Confidential Information.
- 14.6 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 14.7 The above provisions of this clause 14 shall survive termination of this agreement, however arising.

15. INDEMNITY

- 15.1 The Customer shall defend, indemnify and hold harmless CashCalc against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services.
- 15.2 CashCalc shall defend the Customer, its officers, directors and employees against any claim that the Services infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) CashCalc is given prompt notice of any such claim;
 - (b) the Customer provides reasonable co-operation to CashCalc in the defence and settlement of such claim, at CashCalc's expense; and
 - (c) CashCalc is given sole authority to defend or settle the claim.
- 15.3 In the defence or settlement of any claim, CashCalc may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 15.4 In no event shall CashCalc, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services by anyone other than CashCalc; or
 - (b) the Customer's use of the Services in a manner contrary to the instructions given to the Customer by CashCalc; or
 - (c) the Customer's use of the Services after notice of the alleged or actual infringement from CashCalc or any appropriate authority.

15.5 The foregoing states the Customer's sole and exclusive rights and remedies, and CashCalc's (including CashCalc's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

16. LIMITATION OF LIABILITY

16.1 This clause 16 sets out the entire financial liability of CashCalc (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

- (a) arising under or in connection with this agreement;
- (b) in respect of any use made by the Customer of the Services; and
- (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

16.2 Except as expressly and specifically provided in this agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use. CashCalc shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to CashCalc by the Customer in connection with the Services, or any actions taken by CashCalc at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (c) the Services are provided to the Customer on an "as is" basis.

16.3 Nothing in this agreement excludes the liability of CashCalc:

- (a) for death or personal injury caused by CashCalc's negligence; or
- (b) for fraud or fraudulent misrepresentation.

16.4 Subject to clauses 16.2 and clause 16.3:

- (a) CashCalc shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- (b) CashCalc's total aggregate liability in contract (including in respect of the indemnity at clause 15.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

17. TERM AND TERMINATION

17.1 This agreement shall, unless otherwise terminated as provided in this clause 17, commence on the Effective Date and shall continue unless:

- (a) either party notifies the other party of termination by at least one month's notice; or
- (b) otherwise terminated in accordance with the provisions of this agreement;

and such duration shall constitute the **Subscription Term**.

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

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 198;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.2(d) to clause 17.2(j) (inclusive); or

- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

17.3 On termination of this agreement for any reason:

- (a) all rights granted under this agreement to the Customer shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property, and other items (and all copies of them) belonging to the other party;
- (c) CashCalc may destroy or otherwise dispose of any of the Customer Data in its possession unless CashCalc receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. CashCalc shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by CashCalc in returning or disposing of Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

18. FORCE MAJEURE

CashCalc shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of CashCalc or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of CashCalcs or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

19. VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21. RIGHTS AND REMEDIES

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

22. SEVERANCE

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

22.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

23. ENTIRE AGREEMENT

23.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

23.2 Each of the parties acknowledges and agrees that in entering into this 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 this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

24. ASSIGNMENT

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

24.2 CashCalc may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

25. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

26. THIRD PARTY RIGHTS

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

27. NOTICES

Any notice required to be given under this agreement shall be sent by the Customer to info@cashcalc.co.uk and, in respect of notices given by CashCalc shall be sent to any Registered User of the Customer.

28. GOVERNING LAW

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

29. JURISDICTION

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