

Online Ts & Cs for OAG

YOUR ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 15 (LIMITATION OF LIABILITY).

1. About us

1.1 **Company details.** Operations Assessment Group Ltd. is a company incorporated and registered in England and Wales with company number 10850935 whose registered office is at Upper Eyton Farm, Alberbury, Shrewsbury, Shropshire, United Kingdom, SY5 9AB (**we** and **us**). Our VAT number is 283 4710 95. We operate the website www.operationsassessment.com.

1.2 **Contacting us.** To contact us please email us at info@operationsassessment.com.

2. Our contract with you

2.1 **Our contract.** These terms and conditions (**Agreement**) apply to the order by you and supply of Services by us to you (the **Contract**). They apply to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.2 We have developed certain software applications and platforms which we make available to subscribers via the internet on a pay-per-use basis for the purpose of producing reports highlighting areas for operational improvement.

2.3 You wish to use our Services in your business operations. We have agreed to provide, and you have agreed to take and pay for our service subject to the terms and conditions of this Agreement.

3. Placing an order and its acceptance

3.1 **Placing your order.** Please follow the onscreen prompts to place your order. You may only submit an order using the method set out on the site (the **Order Form**). Each order is an offer by you to buy the subscription services specified in the Order Form (**Services**) subject to this Agreement.

3.2 **Correcting input errors.** Our order process allows you to check and amend any errors before submitting your order to us. Please check the order carefully before confirming it. You are responsible for ensuring that your order is complete and accurate.

3.3 **Acknowledging receipt of your order.** After you place your order, you will receive an email from us acknowledging that we have received it, but please note that this does not

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mean that your order has been accepted. Our acceptance of your order will take place as described in clause 3.4.

- 3.4 **Accepting your order.** Our acceptance of your order takes place when we send an email to you to accept it (**Order Confirmation**), at which point and on which date (**Commencement Date**) the Contract between you and us will come into existence. The Contract will relate only to those Services confirmed in the Order Confirmation.

4. Services

- 4.1 We shall, during the Subscription Term, provide the Services and make available the Documentation to you on and subject to the terms of this Agreement.
- 4.2 We shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) Scheduled maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time.
 - (b) unscheduled maintenance performed outside Normal Business Hours, provided that we have used reasonable endeavours to give you notice in advance.

5. Refund policy

- 5.1 We offer full money back guarantee on all purchases made on our website. To be eligible for a refund you must not have accessed the assessment questionnaire.

6. Refunds

- 6.1 Apply for a refund via the website contact page. You will receive a short email to confirm receipt of your application for a refund. We will check you meet the eligibility criteria and inform you if your refund has been approved or refused.
- 6.2 If your request is approved, your refund will be processed and a credit will automatically be applied to the original payment method within 14 calendar days.
- 6.3 You will be notified when the credit has been raised and sent.

7. Late or missing refunds

- 7.1 First check with your bank or credit card company, there is often a processing time before a refund is posted.
- 7.2 Contact us to confirm the refund has been sent.

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8. Data protection

- 8.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 8.2 The parties acknowledge that for the purposes of the Data Protection Legislation, you are the Controller, and we are the Processor.
- 8.3 Without prejudice to the generality of clause 8.1, you will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to us for the duration and purposes of this Agreement.
- 8.4 Without prejudice to the generality of clause 8.1, we shall, in relation to any Personal Data processed in connection with the performance by us of our obligations under this Agreement:
- (a) process that Personal Data only on your documented written instructions unless we are required by Domestic Law to otherwise process that Personal Data. Where we are relying on Domestic Law as the basis for processing Personal Data, we shall promptly notify you of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits us from so doing so;
 - (b) ensure that we have in place appropriate technical and organisational measures, reviewed and approved by you, 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 our 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 UK unless the prior written consent from you has been obtained and the following conditions are fulfilled:
 - (i) you or we have provided appropriate safeguards in relation to the transfer;

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- (ii) the data subject has enforceable rights and effective legal remedies;
- (iii) we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (iv) we comply with reasonable instructions notified to us in advance by you with respect to the processing of the Personal Data;
- (e) assist you, at your cost, in responding to any request from a Data Subject and in ensuring compliance with our obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify you without undue delay on becoming aware of a Personal Data Breach;
- (g) at your written direction, delete or return Personal Data and copies thereof to you on termination of the Agreement unless required by Domestic Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate our compliance with this clause 8.

9. Our obligations

9.1 We shall perform the Services in accordance with the Documentation and with reasonable skill and care.

9.2 The obligation at clause 9.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to our instructions, or modification or alteration of the Services by any party other than us or our duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, we will, at our expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide you with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes your sole and exclusive remedy for any breach of the undertaking set out in clause 9.1.

9.3 We:

- (a) do not warrant that:
 - (i) your use of the Services will be uninterrupted or error-free;
 - (ii) that the Services, Documentation and/or the information obtained by you through the Services will meet your requirements; or
 - (iii) the Software or the Services will be free from Viruses.
- (b) are 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 you acknowledge that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

9.4 We warrant that we have and will maintain all necessary licences, consents, and permissions necessary for the performance of our obligations under this Agreement.

10. Your obligations

10.1 You shall:

- (a) provide us with:
 - (i) all necessary co-operation in relation to this Agreement; and
 - (ii) all necessary access to such information as may be required by the us; in order to provide the Services;
- (b) without affecting your other obligations under this Agreement, comply with all applicable laws and regulations with respect to your activities under this Agreement;
- (c) carry out all other responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in your provision of such assistance as agreed by the parties, we may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) obtain and shall maintain all necessary licences, consents, and permissions necessary for the us, our contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
- (e) ensure that your network and systems comply with the relevant specifications provided by us from time to time; and
- (f) be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing your network connections and telecommunications links from your systems to our data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet.

10.2 You shall own all right, title and interest in and to all of the data you provide to us during the reporting process and in order for us to provide you with the Services that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all Customer Data.

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10.3 You hereby grant to us a non-exclusive, irrevocable licence to the Customer Data for the Subscription Term for the purposes of statistical analysis.

11. Charges and payment

11.1 You shall pay the Subscription Fees to us in accordance with this clause 11

11.2 The Subscription Fees are the prices quoted on our website at the time you submit your order.

11.3 Our Subscription Fees may change from time to time, but changes will not affect any order you have already placed.

11.4 Our Subscription Fees are inclusive of VAT. Where VAT is payable in respect of some or all of the Services you must pay us such additional amounts in respect of VAT, at the applicable rate, at the same time as you pay the Subscription Fees.

11.5 You can pay for the Services using the methods available on our website.

11.6 If, at any time whilst using the Services, you exceed the amount of disk storage space specified in the Documentation, we shall charge you, and you shall pay, our then current excess data storage fees.

11.7 It is always possible that, despite our reasonable efforts, some of the Services on our site may be incorrectly priced. Where the correct price for the Services is less than the price stated on our site, we will charge the lower amount.

12. Proprietary rights

12.1 You acknowledge and agree that we and/or our licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant you any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

12.2 We confirm that we have all the rights in relation to the Services and the Documentation that are necessary to grant all the rights we purport to grant under, and in accordance with, the terms of this Agreement.

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13. Confidentiality

- 13.1 We each undertake that we will not at any time disclose to any person any confidential information concerning one another's business, affairs, customers, clients or suppliers, except as permitted by clause 13.2.
- 13.2 We each may disclose the other's confidential information:
- (a) to such of our respective employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of exercising our respective rights or carrying out our respective obligations under the Contract. We will each ensure that such employees, officers, representatives, subcontractors or advisers comply with this clause 13; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 Each of us may only use the other's confidential information for the purpose of fulfilling our respective obligations under the Contract.

14. Indemnity

- 14.1 You shall defend, indemnify and hold us harmless 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 your use of the Services and/or Documentation, provided that:
- (a) you are given prompt notice of any such claim;
 - (b) we provide reasonable co-operation to you in the defence and settlement of such claim, at your expense; and
 - (c) you are given sole authority to defend or settle the claim.
- 14.2 We shall defend you, your officers, directors and employees against any claim that your use of the Services or Documentation in accordance with this Agreement infringes any UK patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify you for any amounts awarded against you in judgment or settlement of such claims, provided that:
- (a) we are given prompt notice of any such claim;
 - (b) you provide reasonable co-operation to us in the defence and settlement of such claim, at our expense; and
 - (c) we are given sole authority to defend or settle the claim.

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- 14.3 In the defence or settlement of any claim, we may procure the right for you 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 you without any additional liability or obligation to pay liquidated damages or other additional costs to you.
- 14.4 In no event shall we, our employees, agents and sub-contractors be liable to you to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than the us; or
 - (b) your use of the Services or Documentation in a manner contrary to the instructions given to you by us; or
 - (c) your use of the Services or Documentation after notice of the alleged or actual infringement from us or any appropriate authority.
- 14.5 The foregoing state your sole and exclusive rights and remedies, and our (including our employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

15. Limitation of liability

- 15.1 Except as expressly and specifically provided in this Agreement:
- (a) you assume sole responsibility for results obtained from the use of the Services and the Documentation by you, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to us by you in connection with the Services, or any actions taken by the us at your 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 and the Documentation are provided to you on an "as is" basis.
- 15.2 Nothing in this Agreement excludes our liability:
- (a) for death or personal injury caused by our negligence; or
 - (b) for fraud or fraudulent misrepresentation.
- 15.3 Subject to clause **15.1** and clause **15.2**:
- (a) we shall not be liable whether in tort (including for 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) our total aggregate liability in contract (including in respect of the indemnity at clause 14.2), 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 during the 12 months immediately preceding the date on which the claim arose.

16. Use of Deliverable(s)

- 16.1 Any Deliverable produced for you in accordance with this Agreement shall be used by you for your exclusive use and benefit and solely for the purpose for which it has been prepared. We will not owe a duty of care to any third party and assume no responsibility to any third party in respect of the performance of our duties to you.
- 16.2 Unless we provide express prior written consent, no part of the Deliverable should be reproduced, distributed or communicated to any third party. For the avoidance of doubt, you cannot assign the benefit of the Deliverables, in whole or in part, without our prior written consent. We do not accept any liability if the Deliverable is used for an alternative purpose from which it is intended (for example where you intend to sell a company or asset and uses the Deliverable to attract a buyer), nor to any third party in respect of the Deliverable.

17. Termination

- 17.1 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 14 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 and (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 suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - (d) 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;

- (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (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 (being a company, partnership or limited liability partnership);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) 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 17.1(c) to *clause 17.2(j)* (inclusive);
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (m) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy; or
- (n) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

17.2 On termination of this Agreement for any reason:

- (a) all licences granted under this Agreement shall immediately terminate and you shall immediately cease all use of the Services and/or the Documentation;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

- (c) we may destroy or otherwise dispose of any of Customer Data in our possession unless we receive no later than ten days after the Commencement Date of the termination of this Agreement, a written request for the delivery to you of the then most recent back-up of Customer Data. We shall use reasonable commercial endeavours to deliver the back-up to you within 30 days of our receipt of such a written request, provided that you have, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). You shall pay all reasonable expenses incurred by us 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

We shall have no liability to you under this Agreement if we are prevented from or delayed in performing our obligations under this Agreement, or from carrying on our business, by acts, events, omissions or accidents beyond our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving our workforce 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 our default or sub-contractors, provided that you are notified of such an event and our expected duration.

19. Conflict

If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

20. Variation

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

21. 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

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single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

22. 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.

23. Severance

23.1 If any provision or part-provision of this Agreement 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.

23.2 If any provision or part-provision of this Agreement is deemed deleted under clause 23.1 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.

24. Entire Agreement

24.1 This Agreement constitutes the entire Agreement between the parties and supersedes and extinguishes all previous Agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

24.2 Each party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

24.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

25. Assignment

25.1 You shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under this Agreement.

25.2 We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under this Agreement.

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26. 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).

27. 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.

28. Counterparts

28.1 This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

28.2 Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this Agreement.

28.3 No counterpart shall be effective until each party has provided to the other at least one executed counterpart.

29. Notices

29.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(b) sent by email.

29.2 Any notice or communication shall be deemed to have been received:

(a) if delivered by hand, at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

(c) if sent by email, at the time of transmission, or, if this time falls outside Normal Business Hours in the place of receipt, when business hours resume.

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30. 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.

31. 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).

Interpretation

The definitions and rules of interpretation in this clause apply in this Agreement.

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

Change of Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Customer Data: the data inputted by you and by us on your behalf for the purpose of using the Services or facilitating your use of the Services.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018

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(DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Deliverable(s): where applicable a report highlighting areas of operational improvement produced for you through use of the Software and Services.

Documentation: the document made available to you online via www.operationsassessment.com or such other web address notified by us to you from time to time which sets out a description of the Services and the user instructions for the Services.

Domestic Law: means the law of the United Kingdom or a part of the United Kingdom.

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

Software: means an application, provided as part of the Services, that enables you to produce reports on operational efficiency via the internet consisting of the following four key components:

- OAG Janus;
- OAG Pioneer;
- OAG Spearhead; and
- OAG Vanguard.

Subscription Term: as specified in the online Order Form.

Support Services Policy: our policy for providing support in relation to the Services as made available at www.operationsassessment.com or such other website address as may be notified to you from time to time.

Virus: anything or device (including any software, code, file or program) 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.