



Convio® UK Limited Common Ground™ Terms of Use (v2012.1)

These Common Ground Terms of Use (“Terms of Use”) govern the provision of the Software Services by Convio UK Limited (“Convio UK”) to its customer identified on the Order Form (“Client”). These Terms of Use, one or more Convio UK Order Form(s) signed by Client (“Order Form”), and any policies or other documents expressly incorporated by reference herein or therein are collectively referred to as this “Agreement.” This Agreement will be effective as of the date set forth below Client’s signature on the initial Order Form (the “Effective Date”). If Client signs and returns an Order Form but does not complete the date of signature, Convio UK may fill in the date of signature with the date it receives the signed Order Form and that date will serve as the Effective Date of this Agreement.

1. Definitions.

1.1 “CG Service” means the software application referred to as Common Ground which has been developed by Convio UK and is available to operate in conjunction with the SFDC Service which is hosted by SFDC. The CG Service also includes any CG Service resources and any other updates, or upgrades to such CG Service which are provided by Convio UK from time to time in connection with this service.

1.2 “CG Online Module(s)” means one or more software applications identified in an Order Form as Common Ground Online Modules, such as the Common Ground Fundraising module, which operate in conjunction with the CG Service. The CG Online Module(s) also include any CG Online Module resources and any other updates, or upgrades to such CG Online Module(s) which are provided by Convio UK from time to time in connection with this service.

1.3 “Consultant” means an individual or entity providing services or other assistance to Convio UK or Client in connection with the Software Services or Professional Services, as applicable.

1.4 “Convio UK Content” means the audio and visual information, documents, software, products and services contained in, or made available to Client in conjunction with any Professional Services provided or during course of using the Software Services.

1.5 “Professional Services” means any services to be provided by Convio UK which are specified in an Order Form to this Agreement in the form of a statement of work, service SKU, or other service description.

1.6 “SFDC” means Salesforce.com, Inc., the third party provider of application services which is hosting the CG Service in conjunction with the SFDC Service.

1.7 “SFDC Agreement” means the terms and conditions of the agreement by and between Client and SFDC for use of the SFDC Service, including any service level agreement for hosting and uptime availability and systems operations support.

1.8 “SFDC Service” means the application service being provided by SFDC with which the CG Service interoperates.

1.9 “Software Service(s)” means the CG Service and any CG Online Module(s) (if any) included in an Order Form.

1.10 “Start Date” means, in a Client’s initial Order Form, the date Software Services fees commence for the applicable Users or CG Online Module(s). Unless specified to the contrary for a particular Software Service, the Start Date for the Software Services in the Client’s initial Order Form and shall be calculated as follows: (i) if the Effective Date of the initial Order Form is on or between the 6th and 20th of a month, the Start Date shall be the 1st of the following month; (ii) if the Effective Date of the initial Order Form is on or between the 21st of a month and the 5th of the following month, the Start Date shall be the 15th of such following month.

1.11 “User” means each Client employee or Consultant who is authorised to use the CG Service and has been supplied with Credentials by Client (or by Convio UK at Client’s request).

2. Services Provided.

2.1 CG Service. The Client’s designated primary administrator for the CG Service must register for a CG Service trial instance made available by Convio UK. Initial provisioning will be for a limited term, fully functional evaluation version of the CG Service. Within ten (10) days of the Effective Date of this Agreement (the “Validation Period”), Convio UK will issue the applicable permissions for the number of Users and/or CG Online Modules specified in the Order Form in accordance with this Agreement (“Activation”). The terms and conditions of any evaluation agreement which Client may be required to agree to as part of the trial creation and registration shall be of no force and effect. During the Validation Period, regardless of the actual Start Date, Client may commence using the CG Service for production purposes in accordance with this Agreement. Orders for additional Users and/or CG Online Modules will be provisioned as active by Convio UK within ten (10) days of the effective date of such additional Order Form without further action by Client. This Agreement does not apply to, and expressly excludes the SFDC Service.

2.2 SFDC Service Relationship. **In order to access the Software Services, Client will be required to subscribe to the SFDC Service for not less than the number of Users for which CG Service is purchased hereunder for a duration of not less than the Term.** In addition, if Client elects to utilize a CG Online Module, it will require Client to obtain and maintain a SFDC seat licence for the duration of the Term for this purpose. Convio UK will provide Client the corresponding CG Service User for this purpose for no additional charge. Client represents and warrants that Client has entered into an SFDC Agreement sufficient to meet the requirements of this section. Use of the Software Services will be subject to any use restrictions for the SFDC Service to which Client is subject, including but not limited to Users, storage limits, and bandwidth limits.

2.3 CG Online Module(s). Convio UK represents that any payment card transactions processing which is enabled by the CG Online Module(s) (as applicable) will be compliant with the Payment Card Industry Data Security Standard (PCIDSS); provided, however, that the Client utilizes the payment processing vendor(s) approved by Convio UK for interaction with the Software Services. Additionally, Convio UK maintains an EU Privacy Directive Safe Harbor Certification and Convio UK covenants that it will maintain such certification throughout the Term of this Agreement.

2.4 Deployment. Unless otherwise specified in an Order Form, Client will be responsible for configuration and implementation of the Software Services. Upon request, Convio UK will provide a list of service provider(s) which may assist, at Client’s expense, with configuration and implementation services. Convio UK will not be responsible for the performance of such third party service providers.

2.5 Professional Services. *(Applicable only to Clients where Professional Services are included in an Order Form).* Client may engage Convio UK to provide certain Professional Services as set forth in an Order Form or in any separate Statement of Work executed by both Convio UK and Client (“Statement of Work”).

2.5.1 Convio UK will use commercially reasonable endeavours to perform the Professional Services specified in the Agreement subject to the terms of

this Section 2.5 and the relevant terms of this Agreement. Client acknowledges that the provision of Professional Services by Convio UK is dependent on Client providing reasonable access to relevant resources and timely decisions and input in connection with those Professional Services.

2.5.2 Any material change to the timing or scope of the Professional Services will be managed using Convio UK's change management process. Under this process, either Convio UK or Client may initiate a change request when some material change or event has occurred that may impact the scope of the Professional Services. Once submitted, Convio UK will respond with formal documentation that includes description of the change, the effort to implement the change, the impact to project schedule, and the cost of the change ("Change Order Proposal"). The Client and Convio UK must agree in writing to any Change Order Proposal in the form of a written amendment to this Agreement before any such changes are effective.

2.6 Technical Support. During the Term, Convio UK will provide Client's Users with online, ticket-based support to assist Client with use of the Software Services. Such support consists of assistance with usage questions or troubleshooting bugs or other issues. Support hours are from 7:00 a.m. to 5:00 p.m. Central Time on weekdays (except federal holidays). For service level agreements by case priority and other details pertaining to technical support, refer to the [Common Ground Support Policy](#).

2.7 Upgrades. Convio UK will from time to time in Convio UK's discretion provide upgrades to the Software Services at no additional charge.

3. Order Process. The initial order for CG Service Users and any CG Online Modules are as set forth in the initial Order Form which references these Terms of Use. Orders for additional Users or CG Online Modules will be made by mutual execution of an additional Order Form and any such additional Users will be provided access to the CG Service in accordance with Section 2. Unless specified to the contrary in an Order Form, (i) any Software Services which are added following the initial order will be coterminous with the preexisting Term, and (ii) the monthly fees for any added Software Services will commence on the Client's next billing month following the Effective Date of the applicable Order Form and will be synchronized to the 1st or 15th based upon the Start Date in the initial Order.

4. Fees and Payment Terms.

4.1 Fees. Client will pay Convio UK the amounts set forth in the Order Form for the Software Services and Professional Services. All fees specified in an Order Form are in US Dollars and all payments must be submitted in US Dollars. The Software Service Fees due for any Renewal Term may be annually increased (such increase will not exceed a 5% increase over the prior period) and will be invoiced on the same schedule as in effect for the billing period immediately prior to the expiration of the Renewal Term.

4.2 Payment. Payment from Client is due within thirty (30) days from the date of invoice. All payments for Software Services will be due annually in advance commencing with the Start Date unless otherwise specified to the contrary in an Order Form. In the event that Client is delinquent in the payment of any amounts due Convio UK, Convio UK may suspend access to the Software Services immediately, without advance written notice to Client. A suspension under this Section 4 will not constitute a termination of the Agreement nor will it relieve Client of any of its obligations or liabilities under the Agreement. Any purchase orders issued by Client in connection with this Agreement that contain term and conditions that are inconsistent with or in addition to the terms and conditions of this Agreement and an executed Order Form are null and void and do not apply to Convio UK.

4.3 Taxes. The fees set forth in the Order Form do not include taxes (unless stated otherwise), which will be payable in addition to the sum in question at the rate and in the manner prevailing at the relevant tax point. Client will pay and indemnify and hold Convio UK harmless for all applicable sales, use, VAT, excise, import, export, property, withholding or similar taxes or duties in connection with the provision of the Software Services and Professional Services to Client by Convio UK which are not based on Convio UK's net income (including any interest or penalties thereon resulting from Client's failure to pay such taxes or other charges on a timely basis).

5. Client Obligations.

5.1 User Administration. The Software Services will be password-protected and only Users who have properly registered and received a valid user name and password ("Credentials") will be able to access the Software Services. Client represents and warrants that each User that registers under Client's account is, and during the Term will be an authorised agent of Client for purposes of this Agreement. User accounts and Credentials cannot be shared or used by more than one individual User but may be reassigned to new Users replacing former Users who no longer use the Software Services. Client will be solely responsible for administering and monitoring the confidentiality and use of the Credentials. Upon the termination of employment of any User, Client will immediately terminate access of that individual to the Software Services. Client will: (a) notify Convio UK promptly of any unauthorised use of any Credentials or any other suspected violation of this Agreement and (b) not impersonate another SFDC Service user or provide false identity information to gain access to or use the Software Services. This Agreement is not a sale and does not convey any rights of ownership in or related to the Software Services, the SFDC Service or the intellectual property rights owned by Convio UK or SFDC. The salesforce.com name, the salesforce.com logo, and the product names associated with the SFDC Service are trademarks of salesforce.com or third parties, and no right or licence is granted to use them.

5.2 Client Compliance with Laws. Client is responsible for all activity occurring under Client's User accounts and will comply at all times with all laws, statutes and regulations applicable to charitable solicitations, donation forms, receipts, Web site content, data privacy, electronic and international communications, and transmission of technical or personal data, including, where applicable, the guidance and codes of practice issued by relevant government authorities. Client will not engage in any illegal activities or make any illegal or unauthorised use of any information collected through the Software Services. Except as expressly set forth with respect to Convio UK's responsibilities under this Agreement, Client is solely responsible for any and all damages that flow from Client's use of the Software Services. Client shall comply with all applicable laws, statutes, and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (as amended from time to time), and generally in the course of conducting business behave ethically, with integrity and mutual respect (the "**Relevant Requirements**"). Client shall have and shall maintain in place throughout the term of this Agreement its own policies and procedures to ensure compliance with the Relevant Requirements by any of the relevant party's employees, officers, representatives and subcontractors. Client warrants that no intermediary of any kind was used in the negotiation and conclusion of this Agreement.

5.3 Client Control. Convio UK acknowledges that it will not have access to, or control over, any donations resulting from any Software Services or Professional Services provided by Convio UK under this Agreement. Convio UK will not solicit any contributions for or on behalf of Client, nor will it employ or procure any person to solicit contributions for Client. Convio UK will not hold itself out to any person as being engaged in the business of soliciting contributions for Client or advancing Client's

purpose. Client represents that at no time will Convio UK have custody or control of any contributions to Client in the course of performing the Services. Nothing in this Agreement will be construed contrary to this Section 5.3, to the extent that a provision herein could be construed contrary to this Section 5.3, that provision will be void.

5.4 Prohibited Uses. Client may not modify, rent, sublease, sublicense, assign, use as a service bureau, copy, lend, adapt, translate, sell, distribute, derive works from, decompile or reverse engineer the Software Services or any Convio UK intellectual property, except as explicitly permitted hereunder. Unless otherwise expressly set forth in an Order Form, the Software Services provided may be used solely by Client, and not, by implication or otherwise, by any parent, subsidiary or affiliate of Client. Client may not access the Software Service for any benchmarking or competitive purposes. Client may use the Software Services only for Client's internal business purposes and will not: (a) store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material in the Software Services, including material in violation of third party privacy rights; (b) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (c) interfere with or disrupt the integrity or performance of the Software Services or the data contained therein; (d) utilize the Service in a manner inconsistent with the applicable Software Services documentation; or (e) attempt to gain unauthorised access to the Software Services or its related systems or networks. Convio UK reserves the right to suspend the provision of the Software Services or take other appropriate remedial action to address any violation or suspected violation of this Section 5 or for Client use of the Software Services which Convio UK reasonably determines is inconsistent with its online marketing best practices, security procedures or is otherwise harmful to its Software Services environment. Convio UK shall use reasonable endeavours to notify Client and provide an opportunity to cure before taking any such action, if practicable and if allowed by law. A suspension under this Section will not constitute a termination of the Agreement nor will it relieve Client of any of its obligations or liabilities under the Agreement. To the extent that the Client or its Users violate Section 5, Client will be fully responsible to Convio UK for any resulting damages, including any related fines, penalties, remediation and costs of investigation and defense.

6. Ownership, Confidential Information.

6.1 Client Ownership. As between Client and Convio UK, Client will retain all right, title and interest in and to any data, information or materials already legally owned or licenced by Client as well as all information processed by the Software Services regarding individual donors or members ("Client Data"). Client, not Convio UK, will have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Client Data, and Convio UK will not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Client Data.

6.2 Convio UK Ownership. As between Client and Convio UK, and subject to the rights set forth above, Convio UK or its licensors owns and retains all rights, title and interest in and to all proprietary and other intellectual property rights with respect to the Software Services and Professional Services together with any and all Convio UK content and other technology that enables the provision of the Software Services and Professional Services, any training materials, product documentation, whitepapers, or deliverables provided by Convio UK under the Agreement, and any suggestions, ideas, enhancement requests, feedback, recommendations for modifications or improvements to the Software Services provided by Client. Unless otherwise expressly stated, this Agreement does not grant the Client any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether

registered or unregistered), or any other rights or licences with respect to the Software Services and Professional Services provided by Convio UK, any training materials, product documentation, whitepapers, or deliverables provided by Convio UK under the Agreement, and any suggestions for modifications or improvements to the Software Services provided by Client. All rights not expressly granted to Client hereunder are reserved by Convio UK and its licensors.

6.3 Use of Client Data. Convio UK and its parent, Convio, will have the right to "roll up" various benchmarking results of Client's use of the Software Services ("Results") with results of other customers' use thereof, for use by Convio UK and its parent, Convio, in the ordinary course of their respective business as it sees fit, provided that such Results will under no circumstances be identifiable as those of Client.

6.4 Confidential Information.

"Confidential Information" means any information disclosed by one party ("Discloser") to the other party ("Recipient"), either directly or indirectly, in writing, orally or by inspection of tangible objects (including documents, prototypes, samples, software, hardware and equipment), which is designated as "Confidential," "Proprietary" or some similar written designation or otherwise reasonably identifiable as confidential information. Information communicated orally will be considered Confidential Information if the information is orally identified as being Confidential Information at the time of disclosure. This Agreement imposes no obligation upon a Recipient with respect to Confidential Information which (a) is or becomes publicly available through no breach of this Agreement by the Recipient; (b) is already in the possession of the Recipient at the time of disclosure as shown by Recipient's files and records immediately prior to the time of disclosure; (c) is obtained by Recipient from a third party without a breach of such third party's obligations of confidentiality; or (d) is independently developed by the Recipient without use of or reference to the Confidential Information, as demonstrated by the Recipient's documents. Confidential Information of Client is information received by Convio UK that includes but is not limited to its donor, constituent, volunteer, or membership lists. Confidential Information of Convio UK includes, without limitation, the Software Service administration tools, materials in the Convio UK Client Center extranet, any and all product documentation, whitepapers, product guides, data sheets and training materials. This Agreement, including the terms in the Order Form, is Convio UK Confidential Information. Each Recipient will only use Confidential Information to exercise its rights or carry out its obligations under the Agreement and will protect the Confidential Information by using the same degree of care it uses to safeguard its own confidential or proprietary information of a like nature from unauthorised use, disclosure, or dissemination, but not less than a reasonable degree of care. Each Recipient will restrict access to Confidential Information to those of its employees or Consultants who require such access in the course of their assigned duties and responsibilities and who have been informed of the Recipient's obligations of confidence and have agreed in writing to preserve the confidentiality of such information under terms and conditions no less restrictive than those set forth herein, provided that in the case of Client, Client may not permit a Consultant employed by a competitor of Convio UK or Convio, Inc. to access Confidential Information of Convio UK without the express written approval of Convio UK. In the event any Confidential Information is required to be disclosed pursuant to any law or judicial order, if permitted by law, the Recipient will give the Discloser immediate notice thereof and will use its commercially reasonable endeavours to seek or to cooperate with the Discloser in seeking a protective order.

7. Warranty.

7.1 Limited Warranty. Convio UK warrants that the Software Services will perform in all material respects the functions described in the then

current product documentation for the Software Service in question. If the Software Services fails to operate as warranted in this Section 7.1 and Client notifies Convio UK in writing of the nature of the non-conformance ("Notice"), Convio UK will use commercially reasonable endeavours to promptly repair or replace the non-conforming portions of the Software Services without charge. If, after a reasonable opportunity to cure, Convio UK does not remedy the non-conformance, Client may no later than sixty (60) days after giving the Notice terminate the Agreement and receive a refund of the prepaid Software Service fees for the period following the date of Notice. The foregoing provides Client's sole and exclusive remedy for breach of the exclusive warranty in this Section 7.1.

7.2 WARRANTY DISCLAIMER. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 7.1, CONVIO UK MAKES NO OTHER DIRECT, EXPRESS, IMPLIED OR STATUTORY WARRANTY WITH RESPECT TO THE SOFTWARE SERVICES OR PROFESSIONAL SERVICES, AND DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY WARRANTY ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. Convio UK does not warrant that the Software Services and the Client Data stored through the use of the Software Services are not susceptible to intrusion, attack or computer virus infection.

8. Limitation of Liability. CONVIO UK'S LIABILITY FOR ANY CLAIM ARISING UNDER OR RELATING TO THE AGREEMENT, THE SOFTWARE SERVICES OR ANY OTHER PROFESSIONAL SERVICES PROVIDED BY CONVIO UK UNDER ANY THEORY OF LIABILITY INCLUDING CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY) MISREPRESENTATION, RESTITUTION OR OTHERWISE, ARISING IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THIS AGREEMENT WILL NOT EXCEED THE FEES PAID TO CONVIO UK FOR CG SERVICES IN THE PRECEDING TWELVE (12) MONTHS PURSUANT TO THE AGREEMENT. UNDER NO CIRCUMSTANCES WILL CONVIO UK BE LIABLE TO CLIENT 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 COST OF COVER, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, COSTS, LOSS, CHARGES OR EXPENSES HOWEVER ARISING UNDER THIS AGREEMENT. NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE CONVIO UK'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, THE NEGLIGENCE OF ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS, OR FRAUD OR FRAUDULENT MISREPRESENTATION. Client acknowledges that Client Data may be transmitted outside of the SFDC Service and SFDC's system and to that extent, neither Convio UK nor SFDC is responsible for the privacy, security or integrity of the Client Data. The Software Services are subject to any limitations, delays, and other problems with the SFDC Service and those inherent in the use of the internet and electronic communications. Convio UK is not responsible for any delays, delivery failures, or other damage resulting from the foregoing.

9. Term and Termination. Unless terminated earlier in accordance with this Section 9, the initial term of the Agreement is the period beginning on the Effective Date and ending the number of months or years specified in the initial Order Form as the contract term (as the

same may be modified or extended from time to time in a subsequent Order Form) following the earliest Start Date; ("Initial Term"). At the end of the Initial Term, the Agreement will automatically renew for consecutive renewal terms equal to the renewal period specified in the applicable Order Form, or if no period is specified, the renewal period will be twelve (12) months in length (each, a "Renewal Term") unless either party gives a written notice of termination at least thirty (30) days prior to the end of the Initial Term or the then current Renewal Term. The terms Initial Term and Renewal Term will be referred to herein as the "Term." Convio UK may terminate the Agreement by written notice if Client commits a material breach of the Agreement, if such breach is not cured within thirty (30) days of written notice thereof. In the event of a material breach by Convio UK of its obligations hereunder and such breach is not cured within thirty (30) days of written notice thereof, Client may terminate the non-conforming portion of the Order Form or Professional Service by written notice to Convio UK. Upon termination of the Agreement or termination of the Software Services or other Professional Service, as the case may be, Convio UK will immediately cease providing any such service. All Client Data will be accessible pursuant to, and to the extent permitted by, the SFDC Agreement. The provisions of Sections 1, 4, 5, 6, 7.2, 8, 9, 10, and 11 will survive termination of the Agreement.

10. Exceptions.

10.1 CG Service Exclusions. Notwithstanding anything to the contrary in this Agreement, Client understands that the portions of the Software Services hosted by Convio UK may be subject to reasonable periods of unavailability and that Convio UK will have no liability under this Agreement (e.g., under Sections 2.4, 7, and 8), with respect to: (a) customizations of the SFDC Service by Client, its Users or Consultants, (b) use of the Software Services in violation of this Agreement or other than in accordance with the published user documentation; (c) failures which are caused by third party software or hardware products including the SFDC Service, or (d) Client's failure to install the latest update provided to the Software Services within ninety (90) days of its availability.

10.2 SFDC Service Changes. In addition, in the event SFDC (a) alters the SFDC Service in such a way as to materially adversely impact the operation of the Software Services or Professional Services, or (b) no longer agrees to host the CG Service under the same terms and conditions as are currently in place, then Convio UK may in its sole discretion restore the operation of the Software Service and related Professional Services (if any) in a reasonable period of time or cease offering all or part of the Software Services and impacted Professional Services (if any). In the latter event, Convio UK will refund the applicable prepaid Software Service and/or Professional Services fees for the period following the date the applicable portion of the Software Service ceases to be interoperable with the SFDC Service or the CG Service ceases to be hosted by SFDC, as applicable. The remedies set forth in this Section are the sole remedies for a failure to provide the Software Services or Professional Services due to the foregoing reasons, and Convio UK will have no other obligation or liability with respect thereto.

11. General.

11.1 Interpretation. This Agreement, and any documents referred to in it, constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all previous agreements or representations, whether oral or written. The Agreement may not be modified or amended except in writing signed by a duly authorised representative of each party. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect. The failure of either party to enforce at any time any of the provisions of this

Agreement will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the right of either party to enforce each such provision thereafter. The express waiver by either party of any provision of this Agreement will not constitute a waiver of any future obligation to comply with such provision. Client may not assign its rights under the Agreement to a third party, including by means of merger or operation of law.

11.2 Governing Law. The Agreement will be construed and governed in accordance with the laws of England. The parties shall irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

11.3 Notices. Notices under the Agreement will be in writing, signed and provided to the contact and address indicated in the Order Form, provided that a party may change such contact or address by written notice to the other party. All notices provided with respect to this Agreement will be in writing and will be sent by: (a) personal delivery; (b) overnight courier; or (c) first class mail, certified or registered, return receipt requested. Notices to Convio UK will be addressed to the attention of: Chief Financial Officer.

11.4 Force Majeure. Except for the obligation to make payment, failure to perform hereunder will be excused to the extent that performance is rendered impossible by act of war, terrorism, strike, fire, flood, governmental acts or orders or restrictions or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party. Any delay in performance due to Force Majeure will be excused for the duration of the event of Force Majeure.

11.5 Counterparts. This Agreement (including Order Forms and Statements of Work) may be executed in counterparts which, taken together, will form one legal instrument. Any executed copy of the Agreement made by reliable means (e.g. photocopy or facsimile) is considered an original.

11.6 Dispute Resolution. Any dispute between the parties arising out of this Agreement will be first submitted to senior management of both parties for a good faith attempt at amicable resolution. If the parties cannot settle the dispute within twenty (20) days after such meeting of senior management, the dispute will be mediated by a mutually acceptable mediator to be chosen by Convio UK and Client within thirty (30) days after written notice by either party demanding mediation. Neither party may unreasonably withhold consent to the selection of a mediator and Convio UK and Client will share the costs of the mediation equally. The use of any of the above-mentioned procedures will not be construed under the doctrines of laches, waiver, or estoppel to affect the rights of either party adversely. Nothing in this section will prevent Convio UK from exercising its rights under Section 4, nor will it prevent either party from resorting to judicial proceedings, if: (a) good faith endeavours to resolve the dispute under these procedures have been unsuccessful; (b) the claim or dispute involves intellectual property rights; or (c) interim relief from a court is necessary to prevent serious and irreparable injury to that party or to others.