

**GENERAL TERMS AND CONDITIONS OF**

# **Twinfield**

**FOR PARTNERS**



**Wolters Kluwer**  
When you have to be right

# Twinfield

## GENERAL TERMS AND CONDITIONS OF TWINFIELD FOR PARTNERS

### GENERAL

#### 1. DEFINITIONS

**1.1** In these terms and conditions, the following capitalised terms have the meaning set forth hereunder.

**Administration:** financial records which are kept with the use of the Webservice;  
**Customer:** a natural or legal person who is a customer of Partner and for whom Partner maintains one or more Administrations in the Environment;  
**Environment:** an environment within the Webservice dedicated to Partner;

**External Administration:** an Administration to which one or more External Users have access via the Webservice;

**External User:** a User at a Customer, who has access to one or more Administrations which are kept for the Customer;

**Internal Administration** an Administration which can only be accessed by Internal Users;

**Internal User:** a User at Partner, who has access to the Environment and/or one or more Administrations;

**Order Form:** the electronic order form on Twinfield's website which has been completed and submitted to Twinfield by Partner or any other document in which these terms and conditions have been declared applicable;

**Partner:** the natural or legal person who has submitted the Order Form and has therewith entered into the Partner Agreement;

**Partner Agreement:** the agreement referred to in Article 2.1;

**Parties:** Partner and Twinfield;

**Price List:** Twinfield's price list for the use of the Webservice and additional services, as amended from time to time;

**Report:** a report of a User to Twinfield on a problem relating to the Webservice or a question about the use or the implementation of the Webservice;

**Servers:** a collection of dedicated computers and related hardware managed by Twinfield, upon which is installed webserver software, support software or database software for providing the Webservice via the Internet;

**Service Hours:** the opening hours of Twinfield's helpdesk, being Monday to Friday 09.00–17.00 hours British time;

**Special Conditions:** any special terms and conditions which may have been agreed between the Parties;

**Subscription:** a subscription to the Webservice giving an External User access to one or more Administrations on behalf of a Customer;

**Subscription Conditions:** the terms and conditions published on Twinfield's website which apply to the relevant Subscription;

**Super User:** an Internal User who has been appointed by Partner as administrator of the Environment;

**Support:** the provision of customer support pursuant to Article 16;

**Twinfield:** Wolters Kluwer (UK) Limited, registered in England Number 450650, is a member of the Wolters Kluwer group. VAT Registration Number 710 9357 45. Registered office 145 London Road, Kingston upon Thames KT2 6SR.

**User:** a natural person who uses the Webservice on behalf of Partner or a Customer and includes Internal Users, External Users and Super Users;

**Webservice:** the on-line web application for bookkeeping as supplied by Twinfield.

## **2. APPLICABILITY AND ORDER OF PRIORITY**

**2.1** These terms and conditions, together with the Order Form, any Special Conditions, and the Subscription Conditions which apply to each of the Subscriptions constitute the Partner Agreement between Partner and Twinfield and are legally binding on Partner and Twinfield. The Partner Agreement governs all Subscriptions of Partner and all services rendered by Twinfield to Partner to the exclusion of any other terms that Partner seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

**2.2** The documents constituting the Partner Agreement have the following order of priority: the Order Form; the Special Conditions (if any); the Subscription Conditions; these terms and conditions. In case of conflict between those documents, the document with the highest priority will prevail.

**2.3** Twinfield may make amendments to the Partner Agreement. In case of such amendment, Twinfield will give Partner at least 30 days prior notice thereof. An amendment will be considered to be accepted by Partner and will enter into force on the date determined by Twinfield if Partner does not reject the amendment within 30 days following the notification thereof. If Partner rejects an amendment, Twinfield may terminate the Partner Agreement by giving at least 30 days notice of termination.

## **3. AVAILABILITY OF THE WEBSERVICE AND SUBSCRIPTIONS**

**3.1** Twinfield shall grant Partner access to the Webservice and shall use reasonable commercial endeavours to keep the Webservice operational in accordance with the Partner Agreement. Twinfield shall provide Partner with the Environment.

**3.2** Partner may create Administrations, Super Users and Internal and External Users in the Environment. Partner shall register in the Environment to which Administrations each External and Internal User has access and which Subscription applies to each of the External Users. Partner may not create Administrations outside the Environment, provide a Customer with its

own environment or allow a Customer to create Administrations or Users.

**3.3** A Subscription provides one External User access to at most 5 Administrations which are held by Partner for the relevant Customer. If Partner wishes to give an External User access to more than 5 Administrations, it must register one additional Subscription for each 5 additional Administrations to which the External User will get access. The functions offered under a Subscription and the rights attached to a Subscription depend on the subscription level.

**3.4** Partner acknowledges and agrees that the Webservice is provided on an "as is" basis.

## **4. INDEBTEDNESS OF THE FEES**

**4.1** Partner shall be obliged to pay the fees set forth in the Price List for each Internal Administration and each Subscription registered in the Environment. No fee will be due for Internal Users. Each Administration in the Environment which does not comply with Article 4.4 will be considered as an Internal Administration.

**4.2** The fees for Subscriptions and Internal Administrations are charged on a monthly basis and are payable in arrears. In addition, certain specific functionalities may be charged on the basis of actual use. The fees for Subscriptions and Internal Administrations are based on the maximum number of Subscriptions and Internal Administrations of Partner and the most comprehensive Subscription for each External User during the relevant month.

**4.3** Partner shall be charged and pay for at least the minimum number of Internal Administrations set forth in the Order Form, whether or not such Administrations are opened or being used by Partner.

**4.4** No fee will be due by Partner for External Administrations. Such fee is included in the Subscription fee. An Administration will become an External Administration if an External User has access to such Administration under a Subscription registered in the Environment and will remain an External Administration during the term of such Subscription.

**4.5** If an External User has access to more than 5 Administrations in the Environment, Twinfield will be entitled to charge Partner for one additional Subscription for each 5 additional Administrations to which the External User has access. In addition, Twinfield may charge Partner in respect of each External User for the subscription level which corresponds with the most comprehensive functions of the Webservice used by or made available to such External User.

**4.6** Partner may only register its officers, employees and other persons employed or engaged by Partner as Internal Users. A User who is registered as an Internal User, but does not meet these requirements, will be considered as External User. Twinfield shall be entitled to charge Partner for such User at the rate of the most comprehensive Subscription for each 5 Administrations to which such User has access. On request of Twinfield, Partner must demonstrate that an Internal User meets the above mentioned requirements. The burden of proof that a User meets the above mentioned requirements rests on Partner.

**4.7** Without prejudice to article 4.5, Twinfield will be entitled to suspend an External User's access to all Administrations in the Environment if such External User has access to more Administrations than the number of Administrations which corresponds with the number of Subscriptions registered in the Environment for such External User. Twinfield will be entitled to suspend an Internal User's access to all Administrations in the Environment if it has prima facie evidence that such Internal User does not meet the requirements set forth in Article 4.6.

**4.8** Partner shall be responsible for the timely removal from the Environment of Administrations and Subscriptions which are no longer used by Partner and shall be charged and pay for those Administrations and Subscriptions until they have been removed from the Environment. Partner shall also be responsible for the timely removal from the Environment of each External User whose Subscription has ended and shall be charged and pay for such Subscription for the term until the External User has been removed from the Environment.

## **5. PRICING AND TERMS OF PAYMENT**

**5.1** The fees to be paid by Partner to Twinfield for the Webservice and additional services are to be Twinfield's list prices as specified in the Price List. Those prices are exclusive of VAT. The prices for services which are not specified in the Price List will be determined by agreement.

**5.2** Twinfield is entitled to increase its fees annually with the same percentage as the increase of the consumer prices during the prior calendar year as published by [ ] and to round up those prices to whole Great British Pounds.

**5.3** Twinfield will send Partner an invoice each month for the use of the Webservice and additional services in the prior months. The fees for training sessions are due in advance. Consultancy services shall be charged after they have been supplied. Consultancy services which are provided during more than one calendar month will be charged monthly in arrears. Twinfield may demand advance payment of the fees for consultancy services.

**5.4** Partner shall pay Twinfield's invoices within 14 days of the date of invoice. If Partner disagrees with an invoice it must give Twinfield notice thereof within 2 months from the date of invoice. If no objection has been made against an invoice within this term, the indebtedness of the invoice amount by Partner will therewith be established. Time is of the essence for payment. A failure of Partner to pay any amount due to Twinfield in time shall be considered as a material breach of the Partner Agreement.

**5.5** Twinfield may request Partner to pay by direct debit. In case of such payment by direct debit, the amount of the invoice will be debited from Partner's account on the day of the invoice. If Partner does not agree to pay by direct debit or the direct debit entry fails or is not honoured, Twinfield will be entitled to charge an administration fee to Partner of at most GBP 5 per invoice.

**5.6** All payments made by Partner will first be applied against the oldest of any outstanding invoices from Twinfield, irrespective of any other indication by Partner. Partner may not postpone payment or withhold payment of any amount

due to Twinfield because of any set-off, counterclaim, abatement, or other reason.

**5.7** Twinfield is authorised to read out, whether or not automatically, the user management data entered in the Environment and to use those data to ensure correct calculation and invoicing to the Partner.

In addition, Twinfield has the right to check the numbers of Users, Administrations and Subscriptions maintained by Partner in the Webservice.

**5.8** If Partner fails to pay Twinfield on the due date, Twinfield may, without prejudice to any other right or remedy:

a. charge interest on the overdue amount at the rate of 4% per annum above the base rate of the Bank of England from time-to-time. The interest period shall run from the due date of payment until receipt of the full amount by Twinfield, whether before or after judgment. Notwithstanding the foregoing, Twinfield may in the alternative claim interest at its discretion under the Late Payment of Commercial Debts (Interest) Act 1998; and

b. suspend all provision of the Webservice to Partner until payment has been made in full.

**5.9** All sums payable by Partner to Twinfield shall become due immediately on the termination of the Partner Agreement. This article 5.9 is without prejudice to any other right of Twinfield under the law or the Partner Agreement.

## **6. LIABILITY**

**6.1** This Article 6 sets out the entire financial liability of Twinfield (including any liability for the acts or omissions of its employees, agents and sub-contractors) to Partner in respect of:

a. any breach of the Partner Agreement;  
b. any use made by Partner of the Webservice;  
c. any training given or service provided by Twinfield; and  
d. any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Partner Agreement or the supply of the Webservice.

**6.2** Except as expressly and specifically provided in these terms and conditions, 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 the Partner Agreement.

**6.3** Nothing in the Partner Agreement excludes the liability of Twinfield:

- a. for death or personal injury caused by Twinfield's negligence; or
- b. for fraud or fraudulent misrepresentation of Twinfield; or
- c. for damage caused by an intentional act of gross negligence by directors or senior management of Twinfield.

**6.4** Subject to Article 6.3:

a. Twinfield 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 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 the Partner Agreement; and

b. Twinfield's aggregate liability in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise, arising in connection with the performance or lack of performance of the Partner Agreement or the supply of the Webservice shall be limited to the fees paid by Partner to Twinfield for the use of the Webservice during the 12 months period preceding the event which caused the loss or damage.

**6.5** In addition to Twinfield, each of its affiliated companies, employees, agents and sub-contractors may invoke the limitation of liability set forth in this Article 6. Save and except as expressly provided in this Article 6.5 in respect of the parties mentioned in this article and for the benefit of applying the limit referred to in this Article 6.5, a person who is not a party to the Partner Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

**6.6** This Article 6 shall survive termination of the Partner Agreement.

## **7. INDEMNITIES**

- 7.1** Partner shall indemnify Twinfield against all liabilities, costs, expenses, damages and losses (including legal costs and expenses) suffered or incurred by Twinfield arising out of or in connection with:
- a.** any breach of Articles 9.3, 11.5, 12.3, 12.8, 12.11, 12.14, 15.1, 15.2 and 15.6;
  - b.** any third party claim arising out of or in connection with Partner's unauthorized use or adaptation of the Webservice;
  - c.** any claim by a Customer arising out of or in connection with Partner's use of, or omission with regard to the use of the Webservice;
  - d.** claims from third parties that are based on an allegation that the information saved and/or exchanged by Partner or Internal Users is unlawful.

## **8. IP RIGHTS AND RIGHTS IN THE ADMINISTRATIONS**

**8.1** Partner acknowledges and agrees that all intellectual property rights in the Webservice, including (without limitation) the functional and technical design, the lay out, the programming, the structure of the database, the functionalities, and the source codes of the Webservice, and all related documents and all goodwill exclusively belong to Twinfield or its licensors. The provision of the Webservice or any related product or service does not imply any transfer of intellectual property rights to Partner.

**8.2** All rights of whatever nature in the data in an Administration belong to the Customer whose accounts are kept in the Administration.

**8.3** At the request of a Customer, Twinfield may transfer all Administrations of such Customer, with all data therein and with the layout and the headings of the chart of accounts thereof, to the environment in the Webservice of an other accountancy firm, accounting office or other service provider, or to Twinfield's own environment in the Webservice. The Customer, the other accountancy firm, accounting office or service provider and Twinfield will be entitled to continue such Administrations in the layout and with the headings of the chart of accounts thereof. Partner shall inform Twinfield of all user

codes and passwords in respect of those Administrations.

**8.4** Article 8.3 shall apply accordingly in case of termination of the Partner Agreement.

## **9. TERM AND TERMINATION**

**9.1** The Partner Agreement commences on the date of the submission of the Order Form by Partner. The Partner Agreement is entered into for an indefinite period and shall continue for a minimum period of one year, unless terminated as provided in Article 9.2. Either Party may terminate the Partner Agreement for convenience after the minimum period has lapsed by giving 30 days written notice to the other Party with effect from the end of a calendar month.

**9.2** Without prejudice to any other rights or remedies to which the Parties may be entitled, either Party may terminate the Partner Agreement immediately without liability to the other Party if:

- a.** the other Party commits a material breach of any of the terms of the Partner Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that Party being notified in writing of the breach;
- b.** the other Party commits persistent breaches of the Partner Agreement (such breaches having been notified in writing), so as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to abide by the Partner Agreement;

- 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 (being a company) is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or (being an individual) is deemed either as unable to pay its debts or as having no reasonable prospect of doing so, in either case, within the meaning of Section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- d.** an order is made or a resolution is passed for the winding up of the other Party (being a company), or circumstances arise which entitle a court of

competent jurisdiction to make a winding-up order in relation to the other Party;

- e. an order is made for the appointment of an administrator to manage the affairs, business and property of the other Party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other Party, or notice of intention to appoint an administrator (or administrative receiver as the case may be) is given by the other Party or a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);
- f. a receiver is appointed of any of the other Party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other Party, or if any other person takes possession of or sells the other Party's assets;
- g. the other Party makes an arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way;
- h. the other Party (being an individual) is the subject of a bankruptcy petition or order;
- i. the other Party ceases its business; or
- j. the other Party takes or suffers any similar or analogous action in any foreign jurisdiction in consequence of debt.

### **9.3 On termination of this Partner Agreement for any reason:**

- a. Partner shall no longer have access to the Webservice and all Subscriptions of Partner shall end;
- b. Partner shall immediately cease to hold itself out as a Twinfield Partner;
- c. the right of Partner to use the Webservice lapses immediately and Partner shall cease all use of the Webservice;
- d. Twinfield will no longer be responsible for saving the data in the Internal and External Administrations and the Environment. The data referred to in Article 21.2 shall be made available to Partner, provided that Partner makes a written request to that effect to Twinfield within one month after the effective date of the termination of the

Partner Agreement, in which case Article 21.2 shall apply;

- e. the accrued rights of the Parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination shall not be affected or prejudiced.

**9.4** In case of the termination of an Administration, Twinfield will no longer be responsible for saving the data in such Administration. The data in the terminated Administration referred to in Article 21.2 shall be made available to Partner, provided that Partner makes a written request to that effect to Twinfield within one month after the effective date of the termination of the Administration, in which case Article 21.2 shall apply.

**9.5** Twinfield will be entitled to charge a fee for saving data after termination of an Administration or the Partner Agreement.

## **10. FORCE MAJEURE**

**10.1** Twinfield shall not be in breach of the Partner Agreement, nor liable for any failure or delay in performance of its obligations under the Partner Agreement arising from or attributable to force majeure. Force majeure includes a failure of a supplier of Twinfield, government measures or instructions, strikes, power cuts, internet or telephone interruptions and other circumstances beyond Twinfield's reasonable control.

**10.2** If any delaying event under Article 10.1 continues for a period of 60 days or more, either Party may terminate the Partner Agreement by giving written notice to the other Party of its intention to terminate the Partner Agreement at the expiry of 14 days from the date of such notice, unless in the meantime the delay in performance has ended.

## **11. MISCELLANEOUS**

**11.1** Partner consents to Twinfield indicating in advertisements and brochures that Partner is a Twinfield Partner and using Partner's name and logo for that purpose.

**11.2** Partner consents to receiving messages,

newsletters, advertisements and other communications from Twinfield by e-mail, unless it informs Twinfield via Twinfield's website or by e-mail to cso@twinfield.com that it does not wish to receive such communications.

**11.3** All notices and other communications by Partner to Twinfield must be in writing and can be sent by e-mail to cso@twinfield.com. Partner will bear the burden of proof that an e-mail or other written communication has been received by Twinfield. All notices to Partner may be given by e-mail or a communication in the Webservice.

**11.4** No amendment or variation of the Partner Agreement shall be effective unless it is in writing and signed by both Parties or in accordance with Article 2.3.

**11.5** Partner may not, without the prior written consent of Twinfield, assign, transfer, pledge or charge its rights and obligations under the Partner Agreement or allow a third party to make use thereof.

**11.6** Twinfield may at any time assign, transfer, pledge or in any other manner dispose of any or all of its rights and obligations under the Partner Agreement. Twinfield may sub-contract or delegate any or all of its obligations under the Partner Agreement to a third party.

**11.7** The Partner Agreement constitutes the whole agreement between the Parties and supersedes all previous agreements between the Parties relating to its subject matter.

**11.8** If any court or competent authority finds that any provision of the Partner Agreement (or part of any provision) is invalid, illegal or unenforceable, such provision or partprovision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Partner Agreement shall not be affected.

**11.9** No failure or delay by a Party to exercise any right or remedy provided under the Partner Agreement or by law shall constitute a waiver of such right or remedy, nor shall it preclude or restrict the further exercise of such right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other

right or remedy.

**11.10** A person who is not a party to the Partner Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

**11.11** The Partner 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 laws of England and Wales.

**11.12** The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Partner Agreement or its subject matter or formation (including non-contractual disputes or claims).

## USE OF THE WEBSERVICE

### 12. PROVISION AND USE OF THE WEBSERVICE

**12.1** The Webservice is offered from a central location as a shared generic solution. The Webservice is not specifically maintained for Partner or a Customer.

**12.2** Twinfield will send Partner the URL of the Webservice, a user code, a password and the code of the Environment within 5 working days after the date on which the Partner Agreement becomes effective. A Super User can use these to configure and manage the Environment and the Administrations in the Environment on behalf of other Users.

**12.3** Partner will use the Webservice for maintaining and managing the Environment and the Administrations in the Environment and providing support to its Customers. Partner will only have access to the Environment and the Administrations in the Environment. Customers will only have access to the Administrations, which are kept by Partner on behalf of such Customer.

**12.4** If a second User tries to log in to the Webservice witha combination of user code and password that is already being used, the session already in use will automatically be terminated.

**12.5** Partner may open a maximum number of 5 demo Administrations. Each of those demo Administrations may be used by maximum 3 Users for demonstrating and testing the Webservice. Twinfield will be entitled to remove or block a demo Administration if it is used for any other purpose or in any other manner, or if it is used for more than 30 days by the same User or for the same Administration. The demo status is indicated to the User on the desktop of the Webservice and the Administrations concerned are not accommodated in the back-up procedure.

**12.6** The Environment will contain 2 template Administrations. Partner may open a maximum number of 5 template Administrations free of charge.

**12.7** Twinfield has the right to modify the offered functionalities of the Webservice from time to time to improve or change the functionalities and correct errors. Twinfield will make every effort to solve errors in the Webservice, but does not warrant that all errors are corrected. If a modification results in a change in the functionality, Twinfield will give notice thereof via a communication in the Webservice or an e-mail to the Super User.

**12.8** The Users determine which information is saved and/or exchanged using the Webservice. Twinfield has no knowledge of this information. Partner is responsible for ensuring that the information saved and/or exchanged by Users is lawful and does not breach the rights of third parties. Twinfield does not accept any liability whatsoever for the information saved and/or exchanged using the Webservice.

**12.9** Partner (on behalf of itself and its Customers) assumes sole responsibility for the results obtained from the use of the Webservice. Twinfield is not responsible for the correctness of the data or the compliance by Users with accounting regulations. Twinfield makes every effort to ensure that transactions entered by Users are correctly recorded and validated by the Webservice. However, information that is incorrectly entered by a User cannot be recognised as such by the Webservice and Twinfield shall have no liability for any loss or damage

caused by errors or omissions in any information entered into an Administration.

**12.10** If it becomes apparent to Twinfield that the information that is saved in or exchanged via the Webservice is unlawful, then it will delete such information or block the access to it. In no case shall Twinfield be liable for damages resulting therefrom.

**12.11** Twinfield, Partner and the Users are obliged to keep all user codes and passwords secret.

**12.12** Twinfield is not liable for misuse or loss of user codes and passwords, and it may assume that the Users who login using a user code and password are actually the Users who have been authorised to do so by Partner or a Customer. The moment Partner knows or has reason to suspect that user codes or passwords have fallen into the hands of unauthorised persons, it will immediately inform Twinfield thereof.

**12.13** Each User can change his/her own password. Partner will endeavour to ensure that the Users change their passwords at least every 2 months.

**12.14** Partner shall ensure that the Users shall carefully observe the user instructions and directions of Twinfield and are bound to the applicable practices of normal use of a webservice such as the Webservice. If the conduct of Partner or a User endangers the proper functioning of the Webservice, Twinfield will be entitled to block access to the Webservice by such User or all Users, without prior notice.

**12.15** Twinfield applies no fixed limit to the quantity of data and/or master files that Partner and/or the Users may process using the Webservice. However, this does not mean that Twinfield will permit an unlimited processing of such data or master files. In case of higher than average use of an Administration or the Environment compared to the number of Administrations and/or Subscriptions being paid for, Twinfield will inform Partner thereof. When Partner does not reduce or cause the reduction of such use, Twinfield may impose a reasonable increase in fees. If Partner does not agree to pay the higher

fees, Twinfield has the right to terminate the Partner Agreement at no cost with 30 days notice.

**12.16** If Partner wishes to use its own system for user management and therefore allows one or more Users to log in via a single sign-on functionality, it needs to sign a declaration to be obtained from Twinfield. The use of a single-sign-on functionality will be at the risk of Partner.

**12.17** Twinfield is not permitted to use the data from the Environment or Administrations, other than to provide services to Partner or the relevant Customer. Twinfield is permitted to use the data in anonymous form for statistical purposes. Twinfield is allowed to use a copy of the Environment in the acceptance environment to monitor the correct functioning of the Environment or to test the correct functioning of an update of the Webservice.

**12.18** The Webservice will be regularly audited by registered EDP auditors (RE) from a reputable independent IT audit firm.

**12.19** Partner is able to monitor in the Webservice which Users use a certain functionality.

### **13. TRAINING SESSIONS**

**13.1** Partner can register Users to attend a Twinfield training session on the use of the Webservice. If the number of registrations in the judgement of Twinfield gives reason to do so, Twinfield is permitted to reschedule the training session or to combine it with one or more other training sessions. Twinfield gives no warranty whatsoever regarding the content or result of the training. Partner accepts that the training will be given by Twinfield to the best of its ability.

**13.2** The fees for attending a training session, the cancelation policy and other terms and conditions in respect of training sessions are published on Twinfield's website.

### **14. CONSULTANCY SERVICES**

**14.1** The Parties can separately and in writing agree on additional advisory and other services by Twinfield to Partner or a Customer. Such services will be provided on a consulting basis. Twinfield warrants that it will use reasonable skill and care in the

performance of such services, but does not warrant that it will achieve a specific result. Accordingly, Twinfield does not accept liability for failing to achieve a specific result.

**14.2** If it is agreed that the consultancy services will be given in phases, Twinfield is authorised to defer the commencement of the services that form a part of a phase until Partner or the Customer has approved the results of the preceding phase in writing.

**14.3** Twinfield is only obliged to follow instructions by Partner regarding the performance of consultancy services if this is explicitly agreed in writing and does not require extra work, and provided that the instructions are reasonable and given in good time.

**14.4** If an agreement to provide consultancy services is entered into with the view of having it performed by a specific person, Twinfield is nevertheless at all times authorised to replace this person with another person after notifying Partner.

### **15. PRIVACY AND SECURITY**

**15.1** 15.1 Twinfield and all employees of Twinfield shall observe strict confidentiality in respect of all data in the Administrations and the Environment and all information that can be derived there from. The Parties undertake that they shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party or of any member of the group of companies to which the other Party belongs, except as provided in this Article 15.

**15.2** No Party shall use any other Party's confidential information for any purpose other than to perform its obligations under the Partner Agreement.

**15.3** Each Party may disclose the other Party's confidential information:

- a. to those of its employees, officers, representatives or advisers who need to know such information for the purpose of carrying out the Party's obligations under the Partner Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this Article 15; and

**b.** as may be required by law, court order or any governmental or regulatory authority.

**15.4** Information will be regarded as confidential if such information is not generally available to the public, unless the Party providing the information indicates such information as being non-confidential.

**15.5** The use of the Webservice may involve processing personal data. It is the intention of the Parties that, for the purpose of the Data Protection Act 1998, Twinfield will be the data processor and Partner will be the data controller.

**15.6** Partner shall strictly adhere to the Data Protection Act 1998 and shall ensure that both it and the Customers are entitled to transfer the relevant personal data to the Webservice for the purposes of saving and processing those data. Partner shall procure that the Customers ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation.

**15.7** All staff who act under the authority of Twinfield and have access to personal data, will observe confidentiality with respect to those personal data.

**15.8** Twinfield will take reasonable measures to protect the personal data saved or processed in the Webservice and shall strictly adhere to the Data Protection Act 1998. Twinfield will make reasonable effort to prevent unauthorised persons from accessing data of Partner or Customers. The information regarding these measures will be made available to Partner for inspection, to a limited and responsible extent, on Partner's request.

**15.9** The data of Partner and the Customers will only be saved and processed on one of the Servers, all of which are located in a country forming part of the European Economic Area (EEA).

**15.10** Partner shall take reasonable measures to ensure that the Users will use the customary security software that should normally be installed on a computer, such as antivirus, anti-spam, anti-spyware, anti-malware, anti-phishing and firewall software, as well as the security measures that Twinfield makes available.

**15.11** This Article 15 shall survive termination of the Partner Agreement.

## SERVICE LEVEL

### 16. SUPPORT

**16.1** Partner and External Users have the right to Support for the use of the Webservice with respect to the functionality of the Webservice. Support is available during Service Hours. Twinfield can only offer Support if Partner or the relevant Customer uses operating systems that are at the moment of Support supported by the manufacturer of the operating systems. Support comprises general assistance regarding the use of Webservice, explanation of the documentation, help to allow Partner to get the Webservice working correctly and verification and analyses of the correctness of the entered and processed data. Support does not extend to the full operation of functions when no training has been followed by the User, or the provision of implementation, training and consultancy services.

**16.2** Partner shall appoint at least one Super User. One or the Super Users will act as principal contact person with Twinfield. Twinfield may require that a Super User meets certain standards of competence set by Twinfield or attends certain training sessions. The Articles 5 and 13 shall apply to those training sessions.

**16.3** Support is provided via an online helpdesk function in the Webservice or by telephone. Twinfield will be entitled to offer telephone support as a phone paid service. Support by telephone will only be given during Service Hours and will only be available to Super Users. Twinfield will endeavour to adequately answer questions, but does not warrant the correctness and/or completeness of the answers. Questions regarding the method of accounting or internal bookkeeping regulations will not be handled.

**16.4** Internal and External Users can send Reports to Twinfield via the online helpdesk in the Webservice.

**16.5** Partner shall ensure that, before making a Report, Internal and External Users will first put their

questions in respect of the Webservice to a Super User and consult the knowledge base behind the questions mark in the Webservice.

**16.6** Twinfield and third parties who are engaged by Twinfield may have access to the Environment and the Administrations in the Environment for providing Support and may make those changes to the Environment and the Administrations in the Environment as they deem necessary for solving a problem indicated in a Report.

**16.7** Support is provided from an office of Twinfield. If assistance is desired at the location of Partner or a Customer, a separate agreement must be made at the then applicable rate. Article 14 shall apply to such agreement.

**16.8** Twinfield is not liable for any failure to react to a Report due to the incorrect, incomplete or delayed sending and/or receipt of a Report submitted by a User, caused by the malfunctioning of telecom services or hardware of third parties and/or Partner.

**16.9** Twinfield can freely choose which staff member deals with a Report. Partner cannot demand to be served by a specific person.

**16.10** Partner can be charged by Twinfield for processing Category 40 Reports (as referred to in Article 17). If so, Twinfield will inform Partner in advance.

**16.11** Partner can monitor in the Webservice how Twinfield follows up a Report.

## **17. RESPONSE TIMES**

**17.1** Reports have the following priority:

**a.** Category 10 Report: a report on the Webservice being entirely unreachable owing to a fault on the part of Twinfield, or the Webservice having entirely stopped, such that none of the functions are available;

**b.** Category 20 Report: a report on a problem that causes a serious application error, which can endanger the progress of an essential processing period, but which does not bring the entire Webservice to a stop;

**c.** Category 30 Report: a report on a minor problem in the Webservice that does not require the immediate response of Twinfield;

**d.** Category 40 Report: all questions and requests for information regarding the use or implementation of the Webservice.

**17.2** The following response times apply within the Service Hours: Category 10 Reports: 2 hours; Category 20 Reports: 5 hours; Category 30 Reports: 8 hours; and Category 40 Reports: 20 hours. Twinfield will decide in good faith which category applies to a Report.

## **18. ACCESSIBILITY**

**18.1** 18.1 Twinfield will make every effort to ensure the accessibility of the Webservice by Partner and Customers for the purposes to which they are entitled.

**18.2** Twinfield will provide a minimum level of accessibility (uptime) of the Webservice of 99.6% per month, with the exception of the exclusions as indicated in Article 20. The above mentioned percentages are measured over a calendar month and at the closest measuring point. Accessibility is understood to mean that the Webservice is available on the internet at the URL provided to Partner and is actually provided on the Servers. Accessibility is not understood to mean the existence of a working point-to-point connection between the systems at Partner or the Customers and the Servers. Twinfield is not responsible for the systems at Partner or the Customers and the connecting internet infrastructure.

**18.3** The accessibility of the Webservice is measured every 3 minutes from at least 6 locations around the world. The current value of the accessibility can be retrieved using the login screen of the Webservice. The given values reflect the average minimum accessibility from all the measuring locations around the world.

## **19. PERFORMANCE**

**19.1** Twinfield will make reasonable commercial efforts to ensure that the Webservice works properly without any problems and that the speed is sufficient to be able to continuously work with it during the day. In this regard, the following measurement is used

as an objective measuring assessment: the manual retrieval or saving of an entry with two lines using an average computer via an internet connection of average speed in an environment with an average size is effected in two out of three cases within 1,5 seconds, where in the third case the time may not be longer than 2 seconds. Notwithstanding the foregoing, Twinfield:

- a. does not warrant that Partner's or the Customers' use of the Webservice will be uninterrupted or error-free, nor that the Webservice will meet Partner's or the Customers' 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 Partner acknowledges that the Webservice may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

**19.2** Twinfield only warrants the performance indicated in Article 19.1 if and insofar as Partner satisfies the minimum system requirements specified by Twinfield from time to time, including the support of Internet Explorer, Firefox and other browsers that run under Windows, Apple Macintosh and Linux or other platforms. Moreover, Partner must have sufficient bandwidth. In this regard, it is assumed that at least 128 Kbit sec (both download and upload) is available at all times for the workstation from where the Webservice is used, to be measured by an independent website such as [www.speedtest.nl](http://www.speedtest.nl). However, it is not necessary for every individual workstation to have this bandwidth.

**19.3** Twinfield is at all times authorised to change these minimum system requirements. In this case, Partner will be given prior notice. If Partner does not satisfy these new requirements, the warranty in article 19.2 regarding performance lapses.

**19.4** The Webservice is a pure webservice. This means that the Webservice was not developed for use via Terminal Services or Citrix. Twinfield endeavours to support such constructions to the best of its ability.

**19.5** The Webservice is offered from a location

equipped to offer the Webservice in a professional manner according to the current state of the art and customary and acceptable level of costs. This includes the physical protection of the premises, the prevention of access by unauthorised persons, 24/7 hardware-support, fire prevention, power backup and internet access security including a firewall, general security, data protection, and making reserve copies.

**19.6** Twinfield will use reasonable commercial endeavours to monitor and data traffic from and to the Servers 24 hours a day from a central control room and to respond within 30 minutes to unauthorised attempts by third parties to access the Webservice, to irregular traffic that cannot be handled by the Webservice, to harmful data traffic or other attempts to undermine the correct functioning of the Webservice. In such cases, Twinfield is authorised to block access to the Webservice.

## 20. EXCLUSIONS

**20.1** Without prejudice to Article 19.1 sub a and b, the service level set forth in Articles 16 through 19 of these terms and conditions does not apply in the following situations:

- a. during the regular maintenance windows. These will not be scheduled more than 2 times a month and will not commence before 23.00 hours Dutch time. Twinfield will inform Partner about such a maintenance window at least 2 working days in advance;
- b. in case of incidents resulting from or attributable to force majeure;
- c. in case of any problem or disruption caused by an act of a User;
- d. in case of the unavailability of the Webservice at Partner's request, and/or unavailability of the Webservice during work at the request of Partner;
- e. if Twinfield needs the assistance of Partner or a Customer to determine or isolate a problem or fault, and Partner or such Customer does not provide such assistance;
- f. if the Partner does not comply with the minimum system requirements set forth in Article

19.2;

**g.** in case of malfunctioning of the systems at partner or a Customer or the internet infrastructure.

using the reserve copies. To this end, a separate agreement must be made at the then applicable rate and under the then applicable terms and conditions.

## **21. BACK-UP AND OTHER SERVICES**

**21.1** Partner consents to a reserve copy being made of its data and the data of the Customers. The back-up procedure used by Twinfield is as follows. Twinfield will make every effort to a) make an interim copy each hour, which will be kept for one day, b) make a reserve copy once a day that will be kept for 7 days, c) make a week backup each Friday that will be kept for 3 weeks, d) make a month backup each last day of the month that will be kept for one year, and e) keep the backup of 1st January of each year for 7 years. Each reserve copy will be compressed and encrypted via the Rijndael (AES) or 448-Blowfish encryption principle. The reserve copies are saved in an externally located data centre in a country forming part of the European Economic Area (EEA). Files in the function file management are not saved in the reserve copies. No reserve copies will be made of demo Administrations and template Administrations.

**21.2** After termination of the Partner Agreement or an Administration and provided that the request thereto has been made in accordance with Articles 9.3 sub d or 9.4, Twinfield will at the expense of Partner and provided that agreement has been reached by the Parties on the conditions thereof, make the audit file(s) of the Administrations in the Environment or the relevant Administration or specific data or records in the Environment or the relevant Administration available to Partner, in a generally accessible file format. In case of such request Twinfield will make an offer to Partner as regards the data to be exported, the fee and the other terms and conditions of the data transfer. Such offer will be based on Twinfield's consultancy fees as specified in the Price List. Partner agrees that the liability of Twinfield for the availability, completeness, integrity or possibilities for use of such data is entirely excluded. Twinfield is not obliged to convert the data provided or otherwise make them appropriate for use.

**21.3** Partner can request the restoration of data