

## Terms and Conditions for the supply of IT Equipment and Services

The parties have agreed that the Supplier shall provide the Customer with certain IT Equipment and/or Services on these terms and conditions, together with the relevant Schedule/s containing any other terms and conditions specific to the Equipment and/or Services.

### 1. INTERPRETATION

The definitions and rules of interpretation in this clause apply in these terms and conditions.

#### 1.1 Definitions:

**Contract:** The Customer's purchase order and the Supplier's acceptance of it under clause 3.

**Customer:** The person, firm or company who purchases Services from the Supplier.

**Customer Data** means any data provided by the Customer to the Supplier under this agreement, which may include Personal Data.

**Customer's Manager:** The Customer's manager for the Services appointed in accordance with clause 6.1(a).

**Data Protection Legislation:** means all applicable data protection and privacy legislation, regulations and guidance including: (i) prior to the 25 May 2018 ("GDPR Enforcement Date"), the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended, updated or re-enacted from time to time); and (ii) with effect from the GDPR Enforcement Date onwards Regulation (EU) 2016/679 (the "**General Data Protection Regulation**" or "**GDPR**") and the Privacy and Electronic Communications (EC Directive) Regulations 2003.

**Deliverables:** all products and materials developed by the Supplier in relation to the Services in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts).

**Equipment:** the equipment agreed in the Contract to be purchased by the Customer from the Supplier (including without limitation any part or parts of it), and as set out in more detail in the Order Form.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Mandatory Policies:** the Supplier's business policies, together with any relevant third party policies listed in the Schedule, as amended by notification to the Customer from time to time.

**Order Form:** the order form listing the various Equipment and/or Services being purchased by the Customer in accordance with clause 3 of these terms and conditions.

**Pre-existing Materials:** materials which existed before the commencement of the Services.

**Services:** the services to be provided by the Supplier under the Contract, as set out in more detail in the Order Form.

**Software:** any operating system installed on the Equipment.

**Supplier:** PCL Technology Ltd.

**Supplier's Manager:** the Supplier's manager for the Services, appointed in accordance with clause 5.3.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to **writing** or **written** includes faxes and email.
- 1.9 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

## **2. APPLICATION OF TERMS AND CONDITIONS**

2.1 These terms and conditions shall:

- (a) apply to and be incorporated in the Contract; and
- (b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade, custom, practice or course of dealing.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

## **3. EFFECT OF ORDER FORM**

The Order Form constitutes an offer by the Customer to purchase the Equipment and/or Services specified in it on these terms and conditions; accordingly, the execution and return of the acknowledgement copy of the Order Form by the Supplier, or the Supplier's commencement or execution of work pursuant to the Order Form, shall establish a contract for the supply and purchase of such Equipment and/or Services on these terms and conditions.

## **4. BASIS OF SALE OF EQUIPMENT**

4.1 Any quotation is valid for a period of 7 days only, and the Supplier may withdraw it at any time by notice to the Customer.

4.2 Each order or acceptance of a quotation for Equipment by the Customer shall be deemed to be an offer by the Customer subject to these conditions. The Customer shall ensure that its order is complete and accurate.

4.3 A binding contract shall not come into existence between the Supplier and the Customer unless and until the Supplier issues a written order acknowledgement to the Customer, or the Supplier delivers the Equipment to the Customer (whichever occurs earlier).

4.4 The Supplier shall use its reasonable endeavours to deliver any Equipment ordered on the date or dates specified in the Supplier's acknowledgement of order, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of acceptance of the order. Time is not of the essence as to the delivery of the Equipment and the Supplier is not in any circumstances liable for any delay in delivery, however caused.

- 4.5 The Supplier may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the applicable Contract. Each instalment shall be a separate Contract and no cancellation or termination by either party of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.
- 4.6 No order which has been acknowledged by the Supplier may be cancelled by the Customer, except with the agreement in writing of the Supplier and provided that the Customer indemnifies the Supplier in full against all loss (including without limitation loss of profit), costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation. In some instances, a distributor charges a 're-stocking fee' for any return of Equipment, and in such cases, the Supplier shall be entitled to pass this charge on to the Customer, who shall be liable to pay such fee for the cancellation of any Equipment order.
- 4.7 Ownership of the Equipment shall pass to the Customer on the later of completion of delivery (including without limitation off-loading), or when the Supplier has received in full in cleared funds all sums due to it in respect of:
- (a) the Equipment; and
  - (b) all other sums which are or which become due to the Supplier from the Customer on any account.
- 4.8 The Supplier shall not in any circumstances be liable for any damage or defect to the Equipment caused by improper use of the Equipment or use outside its normal application.

## **5. SUPPLIER'S OBLIGATIONS**

- 5.1 The Supplier shall use reasonable endeavours to deliver, install and maintain the Equipment and any other Deliverables to the Customer, and to deliver the Services with due skill and care.
- 5.2 The Supplier shall use reasonable endeavours to meet any performance dates specified by the Customer, but any such dates shall be estimates only and time shall not be of the essence of the Contract.
- 5.3 The Supplier shall appoint the Supplier's Manager who shall have authority to contractually bind the Supplier on all matters relating to the Services. The Supplier shall use reasonable endeavours to ensure that the same person acts as Supplier's Manager throughout the Contract, but may replace him from time to time where reasonably necessary in the interests of the Supplier's business.

## **6. CUSTOMER'S OBLIGATIONS**

6.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services and appoint the Customer's Manager, who shall have the authority to contractually bind the Customer on matters relating to the Services;
- (b) provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by the Supplier;
- (c) provide in a timely manner such access to the Customer's computers (whether physically or remotely) in order for the Supplier to resolve any issues;
- (d) provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects; and
- (e) be responsible (at its own cost) for preparing the relevant premises for the supply of the Services.

6.2 The Customer shall be responsible (at the Customer's cost) for preparing the delivery location for the delivery of the Equipment and for the provision of all necessary access and facilities reasonably required to deliver and install the Equipment. If the Supplier is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, the Supplier may levy additional charges to recover its loss arising from this event.

6.3 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall in all circumstances be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

## **7. SOFTWARE LICENCE**

7.1 If the Supplier refers to a software licence in the acknowledgment of order, the price of the Equipment includes the licence fee for the Customer's right to use the Software.

- 7.2 If the Customer is provided with any operating system software licence in respect of the Software, the Customer shall sign and return it to the Supplier within seven days of installation of the software, unless the licence has been supplied on a "shrink-wrap" or "click-wrap" basis.
- 7.3 If no software licence has been provided to the Customer, the Customer hereby accepts a non-exclusive, non-transferable licence to use the Software on the following conditions:
- (a) the Customer shall not copy (except to the extent permissible under applicable law which is not capable of exclusion by agreement) or for normal operation of the Equipment), reproduce, translate, adapt, vary or modify the software, nor communicate it to any third party, without Supplier's prior written consent;
  - (b) the Customer shall not use the Software on any equipment other than the Equipment, and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software on the medium on which it resides;
  - (c) such licence shall be terminable by either party on 28 days' written notice, provided that the Supplier terminates only if the continued use or possession of the Software by the Customer infringes the developer's or a third party's rights, or the Supplier is compelled to do so by law, or if the Customer has failed to comply with any term of the Contract; and
  - (d) on or before the expiry of this licence, the Customer shall return to the Supplier all copies of the Software in its possession.

## **8. CHANGE CONTROL**

- 8.1 The Supplier reserves the right (but does not assume the obligation) to make any changes in the specification of the Equipment which are required to conform with any applicable legislation or, where the Equipment is to be supplied to the Customer's specification, which do not materially affect their quality or performance. Where the Supplier is not the manufacturer of the Equipment, the Customer acknowledges that it will, at its option, need to purchase any warranty or guarantee offered by the manufacturer.
- 8.2 The Customer's Manager and the Supplier's Manager shall use reasonable endeavours to cooperate and discuss matters relating to the Equipment and the Services. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.
- 8.3 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
- (a) the likely time required to implement the change;
  - (b) any variations to the Supplier's charges arising from the change;

- (c) the likely effect of the change on the Services; and
- (d) any other impact of the change on the terms of the Contract.

8.4 If the Supplier requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.

8.5 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges and any other relevant terms of the Contract to take account of the change.

## **9. CHARGES AND PAYMENT**

### **EQUIPMENT PRICES**

9.1 The price of the Equipment shall be the Supplier's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Supplier's price list current at the date of acceptance of the order.

9.2 The Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of such of the Equipment as has not been delivered to reflect any increase in the cost to the Supplier which is due to market conditions or any factor beyond the control of the Supplier (including without limitation any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Equipment which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.

### **SERVICE PRICES**

9.3 Clause 9.4 and Clause 9.4 shall apply if the Services are to be provided for a fixed price and clause 9.5 shall apply if any Services are to be provided on a time-and-materials basis. The remainder of this clause 9 shall apply in either case.

9.4 Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Order Form. The total price shall be paid to the Supplier in instalments as set out in the Order Form. The Supplier shall invoice the Customer for the charges that are payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in clause 9.5.

- 9.5 Any fixed price contained in the Order Form excludes:
- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the Supplier's personnel in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier; and
  - (b) VAT, which the Supplier shall add to its invoices at the appropriate rate.
- 9.6 Where the Services are provided on a time-and-materials basis:
- (a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard hourly fee rates as amended from time to time – such charges shall be payable for any onsite visits;
  - (b) the Supplier's standard daily fee rates are calculated on the basis of an eight-hour day worked between 9.00am and 5.00pm on weekdays (excluding weekends and public holidays);
  - (c) the Supplier shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 9. Any expenses, materials and third party services shall be invoiced by the Supplier.

#### **PAYMENT TERMS**

- 9.7 The Customer shall pay each invoice submitted to it by the Supplier in full, and in cleared funds, within 30 days of receipt.
- 9.8 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on the due date the Supplier may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
  - (b) suspend all Services until payment has been made in full.
- 9.9 Time for payment shall be of the essence of the Contract.
- 9.10 All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. This clause is without prejudice to any right to claim for interest under the law, or any such right under the Contract.



9.11 All amounts due under this agreement shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

## **10. INTELLECTUAL PROPERTY RIGHTS**

10.1 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Equipment are and shall remain the sole property of the Supplier or (as the case may be) third party rights owner.

10.2 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by the Supplier. The Supplier hereby licenses all such rights to the Customer free of charge and on a non-exclusive, non-transferable and worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties. If the Supplier terminates the Contract under clause 13.1, this licence will automatically terminate.

10.3 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

10.4 In relation to any Software supplied:

- (a) the Customer acknowledges that it is buying only the media on which the software is recorded and the accompanying user manuals;
- (b) nothing contained in these terms and conditions shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals; and
- (c) the Customer shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and user manuals, and shall comply with all licence Contracts, terms of use and registration requirements relating to them.

## **11. CONFIDENTIALITY AND SUPPLIER'S PROPERTY AND COMPLIANCE WITH POLICIES**

11.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier or its agents, and any other confidential information concerning the Supplier's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its

employees, agents or sub-contractors as need to know it for the purpose of discharging the Customer's obligations to the Supplier, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

- 11.2 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 11.3 Subject to clause 11.5, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 11.4 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 11.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 11.6 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.
- 11.7 The above provision of this clause 11 shall survive termination of the Contract, however arising.

## 12. LIMITATION OF LIABILITY

- 12.1 The following provisions set out the entire financial liability of the Supplier (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of the Contract howsoever arising;
  - (b) any use made by the Customer of the Services, the Equipment, the Deliverables or any part of them; and
  - (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.
- 12.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 12.3 Nothing in these terms and conditions excludes the liability of the Supplier:
- (a) for death or personal injury caused by the Supplier's negligence; or
  - (b) for fraud or fraudulent misrepresentation.
- 12.4 Subject to clause 12.2 and clause 12.3:
- (a) the Supplier shall not in any circumstances be liable, whether in tort (including without limitation for breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
    - (i) loss of profits; or
    - (ii) loss of business; or
    - (iii) depletion of goodwill or similar losses; or
    - (iv) loss of anticipated savings; or
    - (v) loss of goods; or
    - (vi) loss of contract; or
    - (vii) loss of use; or
    - (viii) loss or corruption of data or information; or

- (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) the Supplier's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services and Equipment in the preceding 3 months.

### **13. TERM AND TERMINATION**

- 13.1 The Contract shall commence either on the date stated on the Order Form or the date the service is brought live, whichever is the latter and unless terminated earlier under this clause 13, shall continue for the minimum term stated in the Order Form, or if no such term is set out in the Order Form, then for a minimum period of 12 months, at the expiry of which the Contract shall automatically renew for further periods of 12 months until terminated in accordance with this clause 13.
- 13.2 Without limiting its other rights or remedies, the customer may terminate the Contract (in whole or in part) without further liability by giving the supplier 30 days' written notice expiring after the minimum term, unless stated otherwise on the Order Form.
- 13.3 Without prejudice to any other rights or remedies to which the parties may be entitled, the Supplier may terminate the Contract without liability to the other 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 seven days after being notified in writing to make such payment;
  - (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
  - (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
  - (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.3(d) to clause 13.3(j) (inclusive);
- (l) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

13.4 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

13.5 Termination of this agreement shall not affect 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.

#### **14. CONSEQUENCES OF TERMINATION**

14.1 The Customer's right to possession of the Equipment before ownership has passed to it shall terminate immediately if any of the circumstances set out in clause 13.3 arise or if the Customer encumbers or in any way charges the Equipment, or if the Customer fails to make any payment to the Supplier on the due date.

14.2 The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be stored in order to inspect it, or where the Customer's right to possession has terminated, to remove it. All costs incurred by the Supplier in repossessing the Equipment shall be borne by the Customer.

## **15. DATA PROTECTION**

15.1 In this clause, the terms "data controller", "data processor", "data subject", "personal data", "sensitive personal data" and "process" or "processing" have the respective meanings given to them in the Data Protection Legislation. For the purposes of this agreement, the parties acknowledge that, in respect of Personal Data in Customer Data, the Customer shall be a data controller and the Supplier shall be a data processor.

15.2 The Supplier shall:

- (a) only carry out processing of Personal Data on the Customer's instructions and only to the extent necessary to perform the Supplier's obligations under this agreement;
- (b) put in place appropriate technical and organisational measures to protect any Personal Data against any unauthorised or unlawful processing and against accidental loss or destruction or damage;
- (c) take reasonable steps to ensure the reliability of employees who will have access to the Personal Data.

15.3 With effect from the GDPR Enforcement Date, the remainder of this clause 15 shall apply in addition to above clauses 15.1 to 15.2 inclusive.

15.4 The Supplier shall Process the Personal Data only in accordance with documented instructions from the Customer, including with regard to transfers of Personal Data to a third country, save where such instructions are unlawful, and / or where such instructions would cause the Supplier to breach its obligations under this agreement or any other agreement with a third party, and / or otherwise where such instruction delays or prevents performance, in which case the Supplier shall be granted relief from liability hereunder. Where the Supplier can reasonably demonstrate that such instructions have affected the cost of providing the Service, any increase in the Service Charges shall be implemented in accordance with clause 8.

15.5 The Supplier shall ensure that all Supplier personnel who are involved in the Processing of Personal Data have committed themselves to confidentiality or are under statutory obligations of confidentiality concerning the Personal Data;

- 15.6 The Supplier shall not provide any third party with access to the Personal Data or sub contract any of its obligations under this agreement that involve Processing Personal Data without the prior written approval of the Customer, not to be unreasonably withheld or delayed.
- 15.7 The Supplier shall ensure that any sub-contract entered into by the Supplier (where Personal Data is Processed by such sub-contractor) contains provisions which comply with the Data Protection Legislation and in any event are no less onerous than those imposed under this clause 15.
- 15.8 Unless required by law, the Supplier shall, upon termination or expiry of this agreement for whatever reason, at the Customer's cost, either securely delete or return all of the Personal Data to the Customer. The Supplier shall determine the method by which the said obligation is met.
- 15.9 The Customer warrants that it shall not upload any Customer Data onto the Service which would place the Supplier in breach of Data Protection Legislation and the Customer shall hereby indemnify the Supplier in full and shall hold the Supplier indemnified in full against all and any liability, cost or loss in connection with a breach of this clause 15.

**16. FORCE MAJEURE**

The Supplier shall not in any circumstances have any liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

**17. WAIVER**

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

**18. RIGHTS AND REMEDIES**

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

**19. SEVERANCE**

- 19.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 19.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**20. ENTIRE AGREEMENT**

- 20.1 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.
- 20.2 Each party acknowledges that in entering into this agreement it does not rely on and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 20.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

**21. ASSIGNMENT**

- 21.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 21.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.



**22. NO PARTNERSHIP OR AGENCY**

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**23. THIRD PARTY RIGHTS**

No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

**24. NOTICES**

24.1 Any notice or other communication given to a party under or in connection with this contract 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; or
- (b) sent by fax to its main fax number.

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

- (a) if delivered by hand, on signature of a delivery receipt or 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 at the time recorded by the delivery service;
- (c) if sent by fax, at 9.00 am on the next Business Day after transmission.

24.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include email.

**25. GOVERNING LAW AND JURISDICTION**

The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales, and 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).