

FAT POTATO LTD TERMS AND CONDITIONS FOR THE SUPPLY OF IT SERVICES

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 9 (LIMITATION OF LIABILITY).

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

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| Business Day: | a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business. |
| Charges: | the charges payable by the Customer for the supply of the Services in accordance with clause 5. |
| Commencement Date: | has the meaning given in clause 2.2. |
| Conditions: | these terms and conditions as amended from time to time in accordance with clause 14.5. |
| Contract: | the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions, comprising of the Order Form and these Conditions. |
| Control: | has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly. |
| Customer: | the person or firm who purchases Services from the Supplier and whose details are set out in the Order Form. |
| Customer Default: | has the meaning set out in clause 4.2. |
| Deliverables: | any systems or deliverables that the Supplier produces for the Customer as part of the Services, the details of which (if any) are set out in the Order Form. |
| Intellectual Property Rights, IPR's: | patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world. |
| Invoicing Intervals | the frequency and/or intervals that the Supplier shall be entitled to raise its invoices for the Charges, as set out in the Order Form. |
| Liability Event | has the meaning set out in clause 9.3. |
| Licence | the licence to be granted to the Customer in respect of the Intellectual Property Rights in the Deliverables pursuant to clause 6.2.2, the details and parameters of which are set out in the Order Form. |

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| Order: | the Customer's order for Services as set out in the Order Form. |
| Order Form | the Supplier's completed order form which sets out the details of the Customer, the Services and Payment Terms and is to be signed by or on behalf of the Parties. |
| Services: | the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification. |
| Services Start Date | the date set out in the Order Form on which the Supplier is, unless such date is changed in accordance with clause 8, to commence the Services; |
| Specification: | the description or specification of the Services as set out in the Order Form. |
| Supplier Materials: | has the meaning set out in clause 4.1.7. |

1.2 Interpretation:

- 1.2.1 Unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision:
- (a) is a reference to it as amended, extended or re-enacted from time to time; and
 - (b) shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.2.2 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.3 A reference to **writing** or **written** includes email.

2. Basis of contract

- 2.1 The Order Form provided by the Supplier to the Customer constitutes an offer by the Supplier to supply the Services to the Customer in accordance with these Conditions. The offer shall remain valid and capable of acceptance (without amendment) by the Customer for a period of 30 days from the date the Order Form is provided to the Customer.
- 2.2 The Customer shall be deemed to have accepted the terms of the Order Form and the documents referred to in and/or attached to the Order Form (including these Conditions) when the Customer returns a signed but otherwise unamended copy of the Order Form to the Supplier and upon such date this Agreement shall come into existence (**Commencement Date**).
- 2.3 If the Customer does not return a signed but otherwise unamended copy of the Order Form (and attached documents) within 30 days, then the Order Form shall automatically expire and will no longer be capable of acceptance by the Customer.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3. Supply of Services

- 3.1 Subject to the terms of the Contract and in consideration of the Customer paying the Charges, the Supplier shall as from the Services Start Date, supply the Services to the Customer in accordance with the terms of the Contract and in particular the Specification (if any), in all material respects.

- 3.2 The Supplier shall use all reasonable endeavours to meet any delivery dates specified in Order Form, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier reserves the right to amend the Specification and/or Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Customer's obligations

- 4.1 The Customer shall:
- 4.1.1 ensure that the terms of the Order Form are complete and accurate and reflect the Customer's service requirements;
 - 4.1.2 co-operate with the Supplier in all matters relating to the Services;
 - 4.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
 - 4.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 4.1.5 if necessary, prepare the Customer's premises for the supply of the Services;
 - 4.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - 4.1.7 keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
 - 4.1.8 comply with any additional obligations as set out in the Specification.
- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 4.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - 4.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
 - 4.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. Charges and payment

- 5.1 Unless stated otherwise in the Order Form, the Charges for the Services shall be calculated on a time and materials basis and in accordance with the Supplier's daily fee rates from time to time, being as at the Commencement Date, the rate set out in the Order Form.
- 5.2 The Customer agrees and acknowledges that the Supplier's daily fee rates for each individual are calculated on the basis of an eight-hour day worked on Business Days, however the daily rate for each individual shall

be pro-rated on an hourly basis and the Charges shall be calculated according to the actual number of hours the particular individual spent providing the Services on a particular Business Day.

- 5.3 The Supplier shall be entitled to charge an overtime rate of 100% of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 5.2.
- 5.4 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 5.5 The Supplier reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 5.6 The Supplier shall invoice the Customer in accordance with the Invoicing Intervals.
- 5.7 The Customer shall pay each invoice submitted by the Supplier:
- 5.7.1 within 30 days of the date of the invoice and
- 5.7.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Contract.
- 5.8 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.9 If the Customer disputes any invoice or part of it, the Customer shall immediately notify the Supplier in writing of the reasons for it disputing the invoice. The Customer shall immediately pay the undisputed portion of the invoice in accordance with clause 5.7 and the Parties shall use their reasonable good faith endeavours to resolve the dispute within 14 days, and in the absence of resolution the provisions of clause 12 shall apply. Upon resolution of the dispute the agreed payable sum shall be paid immediately to the Supplier, together with any interest due under clause 5.10.
- 5.10 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 10, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.10 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.11 All amounts due to the Supplier under the Contract shall be paid by the Customer in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 6. Intellectual property rights**
- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 6.2 In relation to the Deliverables:
- 6.2.1 the Supplier and its licensors shall retain ownership of all IPRs in the Deliverables;
- 6.2.2 the Supplier grants the Customer, or shall procure the direct grant to the Customer of the Licence; and
- 6.2.3 the Customer shall not sub-license, assign or otherwise transfer the rights granted in the Licence:

- 6.3 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

7. Data protection

The parties shall agree that if the provision of the Services involves the processing of personal data by the Suppliers on behalf of the Customer, Schedule 1 shall apply to the Contract and the parties shall comply with their respective obligations set out therein.

8. Delay in Delivery, Customer Cancellation or Rescheduling

- 8.1 Subject to Clause 8.2, the Customer may at any time prior to the commencement of the Services, cancel or reschedule some or all of the Services by providing written notice of the same to the Supplier.

- 8.2 The Customer acknowledges that the cancellation or rescheduling of the Services, would cause financial loss to the Supplier. Accordingly, the Customer agrees that for any notice of cancellation or rescheduling received by the Supplier at any time from the Commencement Date up to and including the Services Start Date, the Customer shall pay the Supplier the following percentages of the Charges payable in respect of the Services:

| Business Days before Services Start Date | % of the Charges |
|--|------------------|
| Greater than 10 but less than or equal to 30 | 25% |
| 10 or less but more than 5 | 50% |
| 5 or less | 75% |
| Services Start Date | 100% |

9. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 9.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £2,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange, and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

- 9.2 References to liability in this clause 9 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

- 9.3 The following provisions set out the entire liability of the Supplier (including any liability for the acts and omissions of the Supplier's officers, employees, agents and contractors) in respect of:

- 9.3.1 any breach of its contractual obligations arising under and/or in connection with the Contract;
- 9.3.2 any misrepresentation, mis-statement or tortious act or omission (including negligence but excluding any of the same made fraudulently) arising under or in connection with the Contract;
- 9.3.3 any other provision of the Contract;

(Liability Event).

- 9.4 Notwithstanding anything to the contrary in the Contract, nothing in the Contract shall limit or exclude the Supplier's liability:

- 9.4.1 for death or personal injury resulting from its own negligence or that of the Supplier's officers, employees, agents and contractors;

9.4.2 fraud or fraudulent misrepresentation; or

9.4.3 to the extent that such liability action or exclusion is not permitted by law.

9.5 Except as expressly and specifically provided in the Contract the Supplier shall have no liability or responsibility for any loss or damage arising out of or in connection with any actions taken by the Supplier at the Customer's direction.

9.6 Subject to Conditions 9.4, the total liability of the Supplier in respect of all Liability Events arising in relation to the Services, Deliverables or otherwise under the Contract shall be limited to 100% of the Charges paid or until the first invoice has been issued, 100% of the Charges to be invoiced.

9.7 Subject to Condition 9.4, the Supplier shall not be liable to the Customer in respect of any Liability Event for any loss or damage which may be suffered by the Customer (or any person claiming through or under the Customer) whether the same are suffered directly or indirectly and whether the loss or damage arise in contract, tort (including negligence) or otherwise howsoever, which falls within the following categories:

9.7.1 loss of profits;

9.7.2 loss of sales or business;

9.7.3 loss of agreements or contracts;

9.7.4 loss of anticipated savings;

9.7.5 loss of use or corruption of software, data or information;

9.7.6 loss of or damage to goodwill or reputation; and

9.7.7 any special, indirect or consequential loss

provided that this Condition 9.7 shall not prevent claims for direct financial loss that are not excluded by Condition 9.7.1 to 9.7.7 inclusive.

9.8 The Supplier shall not be liable for any damage or losses or any additional damage or losses to the extent they arise result of or in connection with any failure of the Customer to observe and perform its obligations under the Contract.

9.9 If a number of Liability Events give rise substantially to the same loss, then they shall be regarded as giving rise to only one claim under the Contract.

9.10 The Supplier shall have no liability to the Customer in respect of any Liability Event unless the Customer shall have served notice of the same upon the Supplier within 3 months of the date the Customer became aware or ought to have become aware of the consequences of the Liability Event.

9.11 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

9.12 The Customer declares and acknowledges that it has considered the provisions of this clause 9 in detail including each of the limitations and considers them reasonable in the circumstances having considered among other factors, the subject matter of the Contract and having had the opportunity to obtain independent legal advice on the same.

9.13 This clause 9 shall survive termination of the Contract.

10. Term and Termination

10.1 The Contract shall commence on the Commencement Date and shall unless terminated earlier in accordance with clauses 10.2 or 10.3 continue until the Supplier has (in its reasonable opinion) completed the Services and/or provided the Deliverables, whereupon it shall automatically terminate and expire.

- 10.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 10.2.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
 - 10.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 10.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 10.3.1 the Customer fails to pay any amount due under the Contract on the due date for payment;
 - 10.3.2 there is a change of control of the Customer;
 - 10.3.3 the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 10.3.4 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if:
- 10.4.1 the Customer fails to pay any amount due under the Contract on the due date for payment;
 - 10.4.2 the Customer becomes subject to any of the events listed in clause 10.2.2 or clause 10.3.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them; and
 - 10.4.3 the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 10.2.2.

11. Consequences of termination

- 11.1 On termination or expiry of the Contract:
- 11.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 11.1.2 the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 11.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 11.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

12. Dispute Resolution

- 12.1 Any dispute which may arise between the Parties concerning the Contract shall be determined as provided in this clause 12.
- 12.2 For the purpose of this clause 12, a dispute shall be deemed to have arisen when one party serves on the other a notice in writing stating the nature of the dispute.
- 12.3 Within two Business Days of receipt of a notice of dispute the parties project managers shall meet to attempt to settle the dispute and they are unable to reach a settlement within 5 Business Days from the date of receipt of the notice, the managing director of the Supplier (or equivalent) shall meet with the Customer managing director (or equivalent) within the following 10 Business Days to attempt to settle the dispute; and
- 12.4 If no settlement is reached under clause 12.3 the dispute shall be determined by the courts of England and Wales and the Parties submit to the exclusive jurisdiction of such courts for such purposes.

13. Non-Solicitation

- 13.1 The Customer shall not, during the period commencing on the Commencement Date and continuing until the expiry of 12 months following termination or expiry of the Contract, (except with the Supplier's prior written consent) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the Supplier's employment, any employee, worker or independent contractor of the Supplier who is during the continuance of this Agreement employed or engaged in the provision of the Services or any services to the Customer.
- 13.2 If the Customer commits a breach of clause 13.1, it shall, without prejudice to any other rights or remedies the Supplier may have, pay to the Supplier as liquidated damages a sum equal to 12 months basic salary or the annual fee that was payable by the Supplier to that employee, worker or independent contractor plus the recruitment costs incurred by the Supplier in replacing such person. Such sum shall be payable on demand or the Supplier may deduct it from payments due to the Customer.
- 13.3 The Parties confirm that these liquidated damages are reasonable and proportionate to protect the Supplier's legitimate business interests.

14. General

- 14.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 14.2 **Assignment and other dealings.**
- 14.2.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 14.2.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.
- 14.3 **Confidentiality.**
- 14.3.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 14.3.2.
- 14.3.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 14.3; and

- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

14.4 **Entire agreement.**

14.4.1 The Contract 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.

14.4.2 Each party acknowledges that in entering into the Contract 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 the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

14.4.3 Nothing in this clause shall limit or exclude any liability for fraud.

14.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

14.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Contract deleted under this clause 14.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

14.8 **Notices.**

14.8.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Order Form (where an email address for service has been provided).

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

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause (c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

14.8.3 This clause 14.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

14.9 **Third party rights.**

14.9.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

- 14.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 14.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

Schedule 1 - Data protection

Part 1 Data Protection Obligations

1. Definitions

1.1 In this Schedule the following words have the following meanings:

Applicable Laws: means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject.

Applicable Data Protection Laws: means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

Customer Personal Data: any personal data which the Supplier processes in connection with this agreement, in the capacity of a processor on behalf of the Customer.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

UK GDPR: has the meaning given to it in the Data Protection Act 2018.

2. Parties Obligations

2.1 For the purposes of this paragraph 2, the terms **Commissioner, controller, data subject, personal data, personal data breach, processor** and **processing**, shall have the meaning given to them in the UK GDPR[, and **supervisory authority** shall have the meaning given to it in the EU GDPR].

2.2 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 2 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.

2.3 The Parties have determined that for the purposes of Applicable Data Protection Laws, the Supplier shall process the personal data set out in Part 2 as a processor on behalf of the Customer.

2.4 In relation to the Customer Personal Data, Part 2 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.

2.5 Without prejudice to the generality of clause 2.2 the Supplier shall, in relation to Customer Personal Data:

- (a) process that Customer Personal Data only on the documented instructions of the Customer, unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Customer Processor Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer

on important grounds of public interest. The Supplier shall immediately inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Legislation;

- (b) implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against its accidental loss, damage or destruction, including inter alia as appropriate:
 - (i) the pseudonymisation and encryption of Customer Personal Data;
 - (ii) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - (iii) the ability to restore the availability and access to Customer Personal Data in a timely manner in the event of a physical or technical incident; and
 - (iv) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

In assessing the appropriate level of security the Supplier shall take into account in particular of the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Customer Personal Data transmitted, stored or otherwise processed.

- (c) ensure, and procure, that any personnel engaged and authorised by the Supplier to process Customer Personal Data keep the Customer Personal Data confidential;
- (d) promptly assist the Customer, at the Customer's expense, in responding to any request from a data subject and in ensuring compliance with the Customer's obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with the Commissioner, supervisory authorities or other regulators and, in particular, the Supplier shall promptly notify the Customer if it receives any complaint, notice or communication (whether from the Commissioner, any data subject, supervisory authority or other third party) which relates to processing of Customer Personal Data;
- (e) notify the Customer without undue delay (and no later than 48 hours) after becoming aware of a personal data breach;
- (f) at the written direction of the Customer, delete or return to the Customer all Customer Personal Data on termination or expiry of the agreement, and certify to the Customer in writing it has done so, unless the Supplier is required by Applicable Law to continue to process that Customer Personal Data, in which case the Supplier shall promptly notify the Customer, in writing, of what that Applicable Law is and shall only be permitted to process that Customer Personal Data for the specific purpose so-notified, and all other requirements set out in this clause 2 shall continue to apply to such Customer Personal Data notwithstanding the termination or expiry of this agreement for as long as such Customer Personal Data is processed by the Supplier. For the purposes of this clause 2.5(f) the obligation to "delete" data includes the obligation to delete data from back-up systems as well as live systems; and
- (g) maintain adequate records, and, on the Customer's request, make available such information as the Customer may reasonably request, and allow for and submit its premises and operations to audits, including inspections, by the Customer or the Customer's designated auditor, to demonstrate its compliance with Applicable Data Protection Laws and this clause 2.

- 2.6 The Supplier shall not, without the prior written consent of the Customer (and in any event subject to the Supplier providing the Customer with reasonable evidence that such activity is being undertaken in full compliance with Applicable Data Protection Laws):
- (a) appoint or replace (or change the terms of the appointment of) any other processor in relation to Customer Personal Data or transfer any Customer Personal Data to the same; or
 - (b) carry out, via itself or via any other processor, any processing of Customer Personal Data, or transfer any Customer Personal Data, outside of the UK, including processing Customer Personal Data on equipment situated outside of the UK.
- 2.7 Either party may, at any time on not less than 30 days' notice, revise this Schedule by replacing it (in whole or part) with any applicable standard clauses approved by the EU Commission or the UK Information Commissioner's Office or forming part of an applicable certification scheme or code of conduct (**Amended Terms**). Such Amended Terms shall apply when replaced by attachment to this agreement, but only in respect of such matters which are within the scope of the Amended Terms.

Part 2 Particulars of the processing

1. Particulars of processing

- 1.1 Personal data which provided by or on behalf of the Customer to the Supplier as part of its use of, or in connection with the provision of the Services and the general performance of the Supplier's other obligations under the Contract.

2. Duration of the processing

- 2.1 The Supplier will only process personal data for as long as is required to comply with the Contract and/or to provide the Services or where it is required to store personal data to comply with Applicable Data Protection Legislation or for the Supplier's business record keeping purposes in accordance with its data retention practices or as otherwise required by law.

3. Types of Personal Data

- 3.1 Contact details, including name, telephone numbers and email addresses of the Customer's employee's;
- 3.2 [Others to be added based upon customer]

4. Categories of Data Subject

- 4.1 Employees of the Customer;
- 4.2 [Others to be added based upon customer]