

1. Your Agreement with iomart

- 1.1 These Terms and Conditions should be read in conjunction with your completed Order Form, and Schedules in which you will find the Service description(s), pricing and other arrangements specific to your contract with iomart.
- 1.2 Our legally binding contract is made up of: (a) the relevant Order Form for the Services you have ordered; (b) the relevant sections of these Terms and Conditions; and (c) Schedules, appendices and other documents incorporated by reference in the Order Form or these Terms and Conditions. For ease, such contract is referred to in these terms as the “**Agreement**”. These Terms and Conditions will apply to the Agreement made between us in relation to the Services to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2. Terminology

- 2.1 To make these Terms and Conditions easier to read, we have given the following expressions a specific meaning:

Applicable Data Protection Law means all applicable data protection and privacy legislation in force from time to time in the United Kingdom including: (a) the Data Protection Act 2018; (b) the retained EU law version of GDPR as it forms part of UK law by virtue of section 3 of the European Withdrawal Act 2018 (“**UK GDPR**”); and (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 in the UK, in each case, as may be amended, superseded or replaced from time to time in the UK;

AUP means iomart's standard acceptable use policy and the terms of which may be updated by iomart from time to time;

Charges means the charges that you will pay to iomart pursuant to paragraph 7, as detailed in the Order Form and updated from time to time in accordance with the Agreement;

Confidential Information has the meaning given in paragraph 12.1;

Customer Data means any information that is provided by or on your behalf to iomart as part of your use of the Services, including any information derived from such information;

Data Centre means:

- (a) in respect of data centre services, the data centre premises from which the Services are provided; or
- (b) in respect of all other Services, any data centre operated by iomart, a member of its group of companies or its subcontractors;

Deliverables means all documents, products and materials developed by iomart as part of or in relation to Professional Services set out in a Statement of Work;

Effective Date means the date set out in the Order Form;

Energy Charges means any costs, charges, expenses, levies, tariffs and taxes whether direct or indirect arising out of or attributable to the use or consumption of energy as a result of the provision of the Services and which are imposed on iomart;

Exit Plan Schedule means iomart's standard exit plan schedule, as referred to in the Order Form;

GDPR means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016;

High Risk Use means use of the iomart Procured Services in any application or situation where the iomart Procured Services' failure could lead to death or serious bodily injury of any person or to severe physical or environmental damage;

Initial Term means the initial term of the Agreement set out in the Order Form commencing on the Start Date;

iomart means iomart Managed Services Limited (Co. No. SC275629) whose registered office is at 6 Atlantic Quay, 55 Robertson Street, Glasgow G2 8JD;

iomart Procured Services means the systems, services, software products, and materials (other than Your Equipment and Third-Party Software) necessary to provide the Services;

IPR means any and all intellectual property rights including without limitation copyright and related rights, trade marks, domain names, rights in goodwill or to sue for passing off, unfair competition rights, rights in computer software, database right, rights in confidential information (including know-how and trade secrets) whether registered or unregistered, which subsist now or in the future in any part of the world;

Law means any applicable law whether local, national or international including statute, statutory instrument and guidelines and codes which have legal effect;

Monthly Recurring Charge means those charges identified as monthly recurring charges as set out in the Order Form;

Network means the connectivity used to access the Services provided by iomart, including:

(a) iomart's underlying connectivity to the internet and/ or between its data centres (and/or the data centres of its subcontractors) and/or the connectivity within a data centre (and/or within the data centre of its subcontractors);

(b) your connectivity to the internet and into your iomart-hosted platform or service; and

(c) the interconnectivity between elements of the Services provided by iomart;

Non-Recurring Charges means those charges identified as non-recurring charges as set out in the Order Form;

Order Form means the order form provided to you by iomart, containing service, pricing and other arrangements specific to the Agreement;

Professional Services means one-off services set out in a Statement of Work;

Schedule means the schedules referred to in the Order Form that apply to each Agreement;

Service Credit means a service credit that may be payable to you for the failure of iomart to meet an applicable Service Level for a particular Service;

Service Levels means the service levels set out in the relevant Service Schedule for that Service (where applicable);

Services means the services described in an Order Form as set out in more detail in the relevant Services Schedule (including any Professional Services);

Service Schedules means those schedules or the Statement of Work referred to in the Order Form which describe the Services provided by iomart to you;

Set-Up Charges means those charges identified as Set Charges as set out in the Order Form;

Start Date means the start date set out in the Order Form. For the avoidance of doubt, the Start Date will take effect regardless of whether all lines or circuits required from third-party carriers to receive the Services are ordered or installed or capable of receiving the Services;

Statement of Work means a statement of work setting out the details of Professional Services to be provided by iomart to you as referred to in the Order Form;

Terms and Conditions means these terms and conditions;

Third-Party Services or Software means services or software provided to you by any supplier other than iomart or an iomart agent;

Variable Service Charge means those variable charges as set out in the Order Form;

Work Product means any work product provided to you or created as part of the Services, including any operations manuals, handbooks, runbooks or other documentation;

Year means a 12-month period commencing on the Start Date and each anniversary thereof;

you and your means iomart's customer, being the person or entity that is identified in the Order Form; and

Your Equipment means your hardware if/when located in an iomart Data Centre.

2.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. Headings have been included for convenience only and will not be used in constructing any provisions of the Agreement. Any references in the Agreement to words in the singular include the plural and vice versa. Where the words "includes" or "including" are used, the words that follow are examples only.

3. Order process

3.1 **Formation of Agreement.** Each Order Form will establish a new Agreement, separate to any other Agreement for the provision of the Services described in that Order Form. These Terms and Conditions will apply to all Order Forms (and all Agreements made under them) executed by you in relation to future Services provided to you by iomart.

3.2 **Schedules.** The Schedules contain terms that are specific to Services that iomart may supply to you. However, for each Agreement only the Schedules expressly and specifically incorporated by the relevant Order Form or these Terms and Conditions will apply to that Agreement.

3.3 **Third party terms.** Certain Services may be subject to additional, third-party terms (including those applying to iomart Procured Services) and you may be required to enter into separate agreements prescribed by a third-party involved in providing those Services or accept third party terms on a "back-to-back" basis. Your use of the Services will be subject to any such third-party terms. Where applicable, further information will be provided in the relevant Schedule or the Order Form (or an attachment thereto provided by iomart).

4. The Services that iomart will provide.

4.1 iomart will provide the Services to you in accordance with the Agreement:

- 4.1.1. to a standard that meets or exceeds the relevant Service Level (if applicable);
- 4.1.2. using reasonable care and skill; and
- 4.1.3. in accordance with applicable Law.

4.2 If you are receiving Professional Services from iomart, iomart will provide the Deliverables as set out in the Statement of Work (as relevant).

4.3 iomart will use reasonable endeavours to meet any dates and times for performance of Services stated in any Service Schedule but these dates and times are estimates only and time of performance shall not be of the essence. Dates and times supplied shall be extended to reflect any delay in performance caused by you or any Force Majeure Event.

4.4 For the avoidance of doubt, and without limitation, the Service does not include any items that are not expressly stated as being provided in the relevant Service Schedule.

5. Licences

5.1 **Licences iomart provides.** Subject to paragraph 5.2, iomart confirms that it owns or is licensed to use the iomart Procured Services. The iomart Procured Services is as stated in the Agreement. You will comply with all licence terms (including those of a third-party) for such iomart Procured Services (including, but not limited to, the Microsoft End User Licence Terms where you use Microsoft products and materials) iomart provides to you as part of the Services or are required to pass down to you such as location of use, user numbers and any other terms, as we shall notify you from time to time, whether in the applicable Order Form, Service Schedules or otherwise.

5.2 **Your Licences.** You warrant and undertake that at all times you will either own or have a valid licence to use Third Party Software and you shall comply with all relevant third-party licence terms when using Third Party Software on the Services. You agree that you will provide copies of the relevant agreements to us on request.

5.3 **Your Compliance.** You shall at all times only install, load and use on the Services any software that has been lawfully obtained in accordance with the applicable terms and you shall not install, load or use any software which: (a) requires consent from the vendor to be used or loaded without first obtaining our consent and all necessary third party consents; and/or (b) by reason of any licence terms, cannot be used with the Services or (with regard to existing licenses) cannot be migrated on to the Services. You may not transfer outside the Services any software (including related documentation) you obtain from us or third-party licensors in connection with the Services without specific authorisation from iomart.

5.4 **Mobility Programme.** If you are using a mobility programme from a software vendor to use or operate Third-Party Software using iomart's Services, you must complete the appropriate procedure with such software vendor and provide evidence of your verification status to iomart before you load or install Third-Party Software on the Services.

5.5 **Right to verify compliance.** You must keep records relating to all use of Third-Party Software and iomart Procured Services during and for a period of six (6) years after the expiry of this Agreement. iomart and/or any third party nominated or verified by iomart (including, but not limited to, any provider of iomart Procured Services (including, but not limited to, Microsoft and/or any third party appointed by or on behalf of Microsoft) and/or any such third party including any auditor or licence management organisation) has the right, at their expense, to audit and verify compliance with any licence terms of Third-Party Software and/or iomart Procured Services. You must promptly provide the relevant auditor with the information the auditor reasonably requests in furtherance of the verification or audit, including access to the systems running Third-Party Software and/or iomart Procured Services and evidence of licenses for Third-Party Software and/or iomart Procured Services. iomart will endeavour to notify you 21 days in advance of its intent to verify your compliance with the licence terms of Third-Party Software and/or iomart Procured Services and any auditor shall be subject to a confidentiality obligation. You agree to complete iomart's self-audit process, which iomart may require as an alternative to a third-party audit. You acknowledge that iomart is obliged to disclose certain usage data relating to your use of Third-Party Software and/or iomart Procured Services and agree that provided iomart takes reasonable steps to confirm such request is a genuine, bona fide third party audit request iomart will not be in breach of its obligations of confidentiality set out in this Agreement nor will iomart be required to obtain your prior consent to disclose such usage data. iomart will be entitled to install, run, amend, update and / or maintain licence monitoring software as part of the Services to ensure your compliance with any applicable terms (including these Terms and Conditions and those of providers of iomart Procured Services) and to monitor any unlicensed use of Third-Party Software or iomart Procured Services.

5.6 **Remedies for non-compliance.** If monitoring, verification or self-audit reveals any unlicensed use of Third-Party Software

or iomart Procured Services, then you must immediately acquire sufficient licences to cover such use and notify iomart immediately and reimburse iomart for any loss, fine, penalties or costs incurred by iomart in relation to the Third-Party Software or iomart Procured Services. iomart reserves the right in its absolute discretion to suspend the Service until such time as you demonstrate compliance with the relevant licence terms. By exercising the rights and remedies described above, iomart does not waive its rights to enforce this Agreement by any other legal means. You agree and acknowledge that you will cooperate in good faith with iomart and/or any third party nominated or verified by iomart to investigate and remedy any non-compliance.

- 5.7 **Indemnity.** You shall indemnify iomart against any and all losses, damages, costs (including legal fees) and expenses suffered or incurred by or awarded against iomart (including a claim by a third-party licensor (or any person on its or their behalf) of the Third-Party Software or iomart Procured Services (as applicable)) as a result of a breach of your obligations under clauses 5.1 (Licences iomart provides), 5.2 (Your Licences), 5.3 (Your Compliance), 5.4 (Mobility Programme) 5.5 (Right to verify compliance) and 5.6 (Remedies for non-compliance).

- 5.8 **Microsoft's Rights.** Microsoft is an intended third-party beneficiary of this clause 5 (Relevant Licences) with the right to enforce its provisions. The use of any and all Microsoft software provided as part of your service is subject to the Microsoft Licensing Terms which can be found here:

<https://www.microsoft.com/en-gb/Licensing/product-licensing/products.aspx>

Your attention is drawn specifically to the Product Terms and Service provider Use Rights documents available at this location for review.

6. Our Commitments to one another

- 6.1 **Authority to sign the Agreement.** Each of us confirms to the other that we have the authority to enter into and meet our respective obligations under the Agreement.

- 6.2 **Relevant licences.** iomart confirms that it owns or is licensed to use the systems, products, and materials (other than Your Equipment and Third-Party Software and Services) necessary to provide the Services to you.

- 6.3 **Acceptable Use.** You will comply with the AUP during the term of the Agreement. If iomart receives a court judgment or order or request related to you or your use of iomart's services, facilities or other networks accessed through iomart from any law enforcement or governmental authority, then iomart will be entitled to comply with such judgement, order or request. iomart will not be obliged to inform you of its receipt of or compliance with such judgement, order or request. Furthermore, you will co-operate in any resulting investigation by iomart or relevant government or law enforcement authorities relating to you or your use of iomart's services, facilities or other networks accessed through iomart. Any government or legal rulings or determinations will be binding on you. If you fail to co-operate with any such investigation, ruling or determination, or fail to immediately rectify any illegal or inappropriate use, iomart may immediately suspend or terminate this Agreement. Further, iomart may modify or suspend your Service or terminate this Agreement in the event of a breach or suspected breach of the AUP or as necessary to comply with any law, regulation or law enforcement or court order.

- 6.4 **Third Party Carriers.** Unless otherwise stated in the Order Form, you are responsible for ordering:

- 6.4.1. all lines or circuits you require from third-party carriers to receive the Services; and
- 6.4.2. any necessary cross-connects from iomart subject to paying iomart's cross-connect charges.

You will ensure that third-party carriers install those circuits in your name. You will be solely responsible for those circuits

and for all payments due to the carriers. You will notify the carrier directly when you wish to end or change those circuits.

- 6.5 **Resale of the Services.** You may use the Services for your own benefit or for the purposes of using the Services to provide your business services to third parties but may not resell or sublet the Services to any third party.

- 6.6 **Insurance.** It is your responsibility to obtain insurance, including in respect of Your Equipment (if any) whilst it is on iomart's premises or in transit and other such insurance, including professional indemnity, cyber-risk and data loss insurance, as may be required by you for provision of the Services by iomart. If iomart asks you to do so, you must provide iomart with the relevant certificates of insurance. iomart will take out and maintain professional indemnity, public liability and product insurance and will provide you with the relevant certificates of insurance on written request by you.

- 6.7 **Your commitments to iomart.** You will:

- 6.7.1. promptly provide iomart with access to your premises and other facilities, equipment, documentation and any other information as reasonably requested by iomart to perform the Services. Any and all documentation and other information will be materially correct, update and complete. You will inform us and our representatives in advance of any policies and procedures regarding health and safety and security that apply of your premises and other facilities;

- 6.7.2. respond to tickets, provide sufficient information and details, answer queries, meaningfully engage with iomart regarding any issues, within reasonable time frames to enable iomart to perform its obligations under this Agreement. You will ensure that all materials, equipment, documents and other property that you provide to us are free from defects or viruses;

- 6.7.3. implement any recommendations made to you by iomart regarding the Services or your systems that will operate with the Services including preparing for any set up, installation, commissioning work, engineering works, equipment maintenance activities, capacity and design (in particular to ensure that the Services are appropriate in size and specification for their intended purpose), operating your environment with the most efficient set up and continued compliance with third party licence terms;

- 6.7.4. where you are receiving Professional Services, maintain a daily back-up of your own data, documents and software and associated restoration measures (including insuring against any loss or damage), implement reasonable business continuity and disaster recovery measures;

- 6.7.5. ensure you have sufficient connectivity services in place;

- 6.7.6. provide iomart with access to an employee with authority to discuss the Services and to approve any variations to the Services;

- 6.7.7. comply at all times with iomart's reasonable instructions and perform any obligations required of you and set out in this Agreement (including, without limitation, those set out in the Service Schedules);

- 6.7.8. not use the iomart Procured Services for any High Risk Use; and

- 6.7.9. use the Services in compliance with Law.

- 6.8 You acknowledge that iomart's performance of its obligations under this Agreement is dependent on your performance of your own such obligations. Accordingly, iomart will not be in breach of the terms of this Agreement or liable for any losses, expenses, damages, costs, claims or liabilities suffered by you as a result of your failure or delay to perform your obligations under this Agreement or any act that you knew or ought reasonably to have known would have resulted in a failure or delay by iomart to perform its obligations under this Agreement. Accordingly, without

prejudice to any other remedy iomart may have, any deadline on iomart will be extended to reflect any failure or delay caused by you.

- 6.9 For the avoidance of doubt, iomart will not be in breach of the terms of this Agreement or liable for any losses, costs or liabilities suffered by you as a result of: (a) a failure by your operating system on which the Services are deployed or with which they work; (b) any Third Party Software used with the Services; or (c) your usage of the Services, or any component of the Services, be in excess of the capacity specifications which are detailed in the Order Form. In such circumstances, iomart reserves the right to suspend the Services by giving as much notice as is reasonably practicable.

7. Charges and their payment

- 7.1 **Implementation/Setup Charges.** From the Effective Date, iomart will invoice you for any Set-Up Charge listed in the Order Form, together with any costs incurred through the purchase of any equipment that you have agreed to pay for in accordance with and as set out in the Order Form. Any other Non-Recurring Charges will be invoiced on delivery or installation. Those invoices will be payable within 14 days of the date on which it is issued to you.

- 7.2 **Recurring Service Charge.** From the Start Date, iomart will also invoice you for the Monthly Recurring Charge (as applicable) listed in the Order Form. The initial invoice shall be a proportionate amount of the Monthly Recurring Charges from the Start Date to the last day of that month. Following iomart's initial invoice, iomart will invoice you for any further instalment of the Monthly Recurring Charge monthly in advance (where applicable). The final invoice shall be a proportionate amount of the Monthly Recurring Charges from the first day of that month to the date of termination. Each invoice will be payable within 30 days of the date on which it is issued to you.

- 7.3 **Variable Service Charges.** iomart will invoice you monthly in arrears for any Variable Service Charges that become payable as a result of the Services that iomart provides. Those Variable Service Charges will be calculated in accordance with the rates set out in the Order Form. That invoice will be payable within 30 days of the date on which it is issued to you.

- 7.4 **Third Party Services.** In line with paragraph 6.4, you are solely responsible for paying any charges for the lease or use of telecommunications lines or any other Third-Party Services.

- 7.5 **Taxes.** The Charges do not include applicable taxes (including VAT) or import/export duties or shipping and delivery charges. If any of those duties or charges are incurred, they will be added to any relevant invoice and will be payable by you or, if payable on a withholding tax basis, will be payable by you to the relevant authority direct.

- 7.6 **Payment of invoices.** Unless you dispute an invoice with good cause, and other than as set out in this Clause 7, you must pay each iomart invoice within 30 days of the date on which that invoice is issued or within such alternative period as is expressly stated in the Agreement (the "**Due Date**"). Unless agreed otherwise, invoices shall be payable by direct debit. Your designated bank account will be charged automatically each month on or before the Due Date. Other than in relation to Service Credits which may be payable to you, you will not be entitled to deduct or off-set any amount that iomart may owe to you against an iomart invoice.

- 7.7 **Disputed Invoices.** If you dispute any invoice in good faith:

- 7.7.1. you shall pay all undisputed amounts in accordance with the provisions of this paragraph 7;
- 7.7.2. you will give iomart written notice of the dispute prior to the Due Date. We shall both use reasonable endeavours to resolve the dispute as amicably and promptly as possible. Following resolution of the dispute, you shall

pay any outstanding sums within 30 days of the date on which the dispute is resolved.

- 7.8 **Suspension of Services for non-payment.** If you do not pay an amount (which is not disputed in good faith):

- 7.8.1. within 30 days of the Due Date, iomart will be entitled, at any time thereafter (until payment is made), to disable the Service. If iomart does disable the Service, it may be re-enabled following payment in full of the relevant outstanding amount. iomart will contact you at least 3 times outlining details of your overdue invoices before taking any of the actions listed in this paragraph 7.7.1; and

- 7.8.2. within 30 days of the date of suspension, iomart may terminate the Agreement and end the Service permanently and charge you a de-installation charge notified to you in advance. If iomart ends the Service in that way, you will still be responsible for your obligations under the Agreement, including the obligation to pay all Charges for the remainder of the Initial Term or Renewal Term; and

- 7.8.3. within thirty (30) days of the Due Date, iomart will be entitled to restrict access to Your Equipment until full payment is made in cleared funds of all such amounts due (together with any accrued interest).

- 7.9 **Interest charge.** If you do not pay any invoice (which is not disputed in good faith) in full by the Due Date, iomart will be entitled to charge you interest on the unpaid undisputed amount calculated at a rate of 8% per annum above the prevailing base rate of the Bank of England, that interest charge being applied until the outstanding undisputed amount is settled in full. iomart's right to charge interest does not affect its right to take other legal action against you in relation to non-payment of the amount concerned.

7.10 Increase in Charges.

- 7.10.1. From the first day of each Year, the Charges will automatically increase by a percentage amount equal to the increase in the retail prices index (as published by the Office for National Statistics) for the previous calendar year. Charges payable during each subsequent Year will be confirmed to you in writing at least 30 days in advance of the start of that Year.

- 7.10.2. iomart may increase its Charges to reflect any change to Energy Charges at any time and from time to time. iomart will give you written notice as far in advance as reasonably practicable of any resulting increase in the Charges. iomart shall take steps to minimise any such increases to the extent possible and shall only pass on increases under this paragraph which are proportionate to any increase imposed on it by its suppliers.

- 7.10.3. iomart may increase its Charges to reflect any increase in third party software licence costs incurred to provide the Services at any time and from time to time. Such increase will take effect from the date the increase is affected by the third-party software licence provider. iomart will give you written notice as far in advance as reasonably practicable of any resulting increase in the Charges. iomart shall only pass on increases under this paragraph which are proportionate to any increase imposed on it by the third-party software licence provider.

8. Acceptance

- 8.1 **Acceptance Criteria.** Where acceptance tests are applicable to the provision of Services, then no later than 10 days from the Effective Date, the parties will prepare and will use reasonable endeavours to agree proposed acceptance criteria for acceptance tests for the Services.

- 8.2 **Acceptance Tests.** The acceptance tests shall be started as soon as reasonably possible following completion of the Services. iomart will endeavour to give you at least 24 hours' notice of the start of the acceptance tests and you are permitted to observe all or any part of the testing.

- 8.3 **Acceptance Remedies.** If any part of the Services fails the agreed acceptance tests, iomart shall remedy the defects or deficiencies and will repeat the relevant tests within a reasonable time. iomart will confirm to you that the Services pass the acceptance tests.
9. **Protection of iomart.** You will indemnify iomart or any iomart employee, officer, director or affiliate (each an "iomart Entity") for any and all liabilities, losses, costs, damages, expenses, claims or expenses suffered as a result or in connection with: (a) your breach or alleged breach of the AUP; or (b) any damage or destruction to the Data Centre, the Network, iomart's premises or equipment; or (c) any damage or destruction to any of iomart's customer equipment or data; or (d) any personal injury to or property damage of any iomart Entity caused by you or results from a breach of this Agreement or something that you have negligently done or failed to do. This will not apply to the extent that the damage, destruction or injury is caused by the negligence or breach of this Agreement by iomart or any iomart Entity. The limit on liability set out in paragraph 10.4 shall not apply to this indemnity.
10. **Limits of Liability**
- 10.1 **Limit of exclusions.** Nothing in these Terms and Conditions excludes or limits iomart's or your liability where that liability arises out of the death or personal injury of any person caused by negligence or for any statement that constitutes fraud or fraudulent misrepresentation.
- 10.2 **Service credits.** Except where you have an express right to terminate the Agreement as set out in an applicable Service Level, the Service Credit payable will be the sole and exclusive remedy by which you will be compensated for any failure (howsoever arising, whether in contract tort or otherwise) by iomart to meet the Service Levels. You agree that the Service Credits are reasonable and proportionate to your legitimate interest in the Services being performed in accordance with paragraph 4.1.1.
- 10.3 **Your obligations.** You will take all reasonable measures to prevent and mitigate any losses, damages, costs and expenses that you may suffer or incur and in respect of which you intend to recover (in whole or in part) under or in connection with the Agreement.
- 10.4 **Cap on liability under each Agreement.** Provided that paragraph 10.1 will always apply, and subject to paragraph 10.3, iomart's total liability to you in relation to loss or damage arising out of or in connection with each Agreement, whether in contract, tort, (including negligence) or otherwise, will be limited to the total Charges paid or payable by you to iomart under that Agreement in the 12 month period preceding the date of claim.
- 10.5 **Exclusion of losses.** Provided that paragraph 10.1 will always apply, neither party shall in any circumstances whether in contract, tort (including for negligence or statutory duty) misrepresentation (whether innocent or negligent), restitution or otherwise be liable for any:
- 10.5.1. loss of revenue, profits, sales or contracts;
 - 10.5.2. loss of anticipated savings;
 - 10.5.3. pure economic loss;
 - 10.5.4. loss of, damage to or corruption of data;
 - 10.5.5. loss of business opportunity and management time;
 - 10.5.6. loss of goodwill;
 - 10.5.7. loss from wasted expenditure, wasted time or business interruption; or
 - 10.5.8. indirect, special or consequential loss, costs, damages, charges or expenses, howsoever arising (whether or not iomart knew or ought to have known that such losses or damages might be incurred).
- 10.6 **Your customers.** You acknowledge that iomart has no duty to any of your customers or any other recipient of any goods or services that you supply to third parties. Provided that paragraph 10.1 will always apply, iomart shall not in any circumstances whether in contract, tort (including for negligence or statutory duty) misrepresentation (whether innocent or negligent), restitution or otherwise be liable for any loss or damage that you incur as a result of claims made by any third party or any other recipient of any goods or services that you supply to third parties.
- 10.7 **Exclusion of implied warranties.** Subject to the warranties that iomart has given to you under the Agreement, all warranties terms and conditions that would otherwise be implied by statute or at common law are excluded to the fullest extent permitted by law. Furthermore, iomart does not warrant, guarantee, or undertake that any Service will be uninterrupted, error-free or capable of withstanding all cyber-attacks or other unauthorised hacking or intrusions.
- 10.8 **Cyber risk.** iomart will perform the Services as set out in the Agreement, iomart has no knowledge of the data or types of data iomart hosts under the Agreement. It is your responsibility to ensure that: (a) the Services are appropriate for the type of data that iomart hosts under the Agreement; (b) you have in place appropriate people, controls, processes, systems and software to prevent and mitigate any cyber risk incident; and (c) you have appropriate insurance in place to cover losses arising from any cyber risk incident (aside from any incident caused directly by iomart's failure to comply with the requirements). Prior to the Effective Date, iomart will provide you with the information necessary for you to assess and determine whether the technical and organisational measures that iomart implements meet your requirements. However, except as expressly provided in this Agreement, iomart does not provide any warranty regarding the adequacy of the Services and does not warrant that the Services, or their design, will protect your data from corruption, theft, loss, or degradation in all circumstances.
11. **Termination**
- 11.1 **Automatic Renewal.** Unless terminated by either party in accordance with this Clause 11 or unless expressly stated otherwise in a Schedule, each Agreement shall take effect on the Effective Date and shall continue until the expiry of the Initial Term and thereafter will automatically renew for consecutive periods of 12 months, starting on the expiry of the Initial Term and each anniversary thereof (each period being a "Renewal Term"). If you are receiving Professional Services from iomart, each Agreement shall take effect on the Effective Date and shall continue until the Professional Services are completed and thereafter this Agreement shall automatically terminate in relation to those Professional Services. For the avoidance of doubt, this Agreement shall continue in accordance with its terms for any other Services that are to be provided after the completion of the Professional Services.
- 11.2 **Terminating the Agreement on notice.** Either you or iomart can end the Agreement by giving the other party at least 90 days' written notice in advance of and to expire at the end of the relevant Initial Term or any subsequent Renewal Term. Notices of termination must be sent by you to cancellations@iomart.com.
- 11.3 **Terminating an Agreement following a breach.** Either of us may end the Agreement with immediate effect on prior written notice to the other if the other:
- 11.3.1. materially breaches its obligations under the relevant Agreement and (if such breach is capable of remedy) does not remedy that breach within 30 days after receipt of written notice from the other party to remedy such breach;
 - 11.3.2. (a) suspends, or threatens to suspend, payment of their debts, or is unable to pay their debts as they fall due or admit inability to pay their debts, or (being a company) they are deemed unable to pay their debts within the meaning of section 123 of the Insolvency Act 1986; (b)

commences negotiations with all or any class of their creditors with a view to rescheduling any of their debts, or make a proposal for or enter into any compromise or arrangement with their creditors other than (in the case of a company) for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or the solvent reconstruction of their company; (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with their winding up (being a company); (d) an application is made to court, or an order is made, for the appointment of an administrator, or an administrator is appointed over them (being a company); (e) the holder of a qualifying floating charge over their assets (being a company) has become entitled to appoint or has appointed an administrative receiver; or (f) a person becomes entitled to appoint a receiver over their assets or a receiver is appointed over their assets; (g) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, them or any part of their assets and such attachment or process is not discharged within 14 days; or (h) any event occurs, or proceeding is taken, in any jurisdiction to which they are subject that has an effect equivalent or similar to any of the events mentioned in this paragraph;

11.3.3. suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of their business.

11.4. **iomart's specific rights to end the Agreement.** iomart may end the Agreement with immediate effect on written notice to you where:

11.4.1. you have breached the AUP (if applicable);

11.4.2. any other Agreement between you and iomart is terminated by iomart under circumstances similar to those set out in paragraphs 11.3 or this paragraph 11.4.

11.5. If section 233A of the Insolvency Act 1968 (as amended by the Insolvency (Protection of Essential Supplies) Order 2015) applies, iomart's right to terminate this Agreement under paragraphs 11.3.1 and 11.3.2 above shall be suspended only to the extent that iomart is unable to contract out of this section.

11.6. **Continuing liability.** Termination or expiry of the Agreement 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 Agreement which existed at or before the date of termination or expiry.

11.7. **The position after the Agreement ends.** When the Agreement expires or terminates:

11.7.1. iomart will immediately stop providing the relevant Service (including iomart Procured Services);

11.7.2. you will comply with the requirements of the relevant end user licence terms relating to the removal of Third-Party Software and/or iomart Procedure Services;

11.7.3. payments due or payable (but not yet due) by you under the Agreement will become due and payable immediately, including any unpaid Charges due for the remainder of the Initial Term or any Renewal Term; and

11.7.4. within 30 days after the Agreement ends, each of us will return all Confidential Information of the other in its possession at the time the Agreement ends and will not make or keep any copies of that Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement.

11.8. **Third Party Supplier Fees.** You acknowledge that, in order to deliver the Services, iomart may enter into contracts with third-party suppliers. If any Agreement is terminated for any reason other than by you under paragraph 11.3, you shall, without prejudice to iomart's other rights and remedies, immediately pay to iomart all fees that iomart is liable to pay

to such parties to terminate such contracts (as notified to you in writing by iomart). You acknowledge that the termination fees may include payment of fees to the third-party suppliers for the minimum term of such contracts.

11.9. You shall indemnify iomart against any and all losses, damages, costs (including legal fees) and expenses suffered or incurred by or awarded against iomart in respect of any claim or action brought against iomart by one of the third-party suppliers described in paragraph 11.8 which results from your breach of any Agreement that causes iomart to be in breach of such third-party contract.

11.10. **Termination of SLA.** On termination or expiry of the Agreement for any reason, any Service Levels which apply to the relevant Services, will no longer apply and will cease to have effect. Service levels will not apply to the provision of any termination assistance (if applicable) or any Services that may continue for any reason after expiry or termination.

11.11. **Exit Plan.** Where noted in the Order Form that the Exit Plan will apply, following the Start Date and on termination or expiry of this Agreement, the parties will comply with the provisions of the Exit Plan Schedule to ensure an orderly transition of the Services to you or any Successor Supplier (as defined in the Exit Plan Schedule).

11.12. **Survival.** On termination or expiry of the Agreement for any reasons, those paragraph (including those in any Schedules or Appendices) which are intended to continue or come into force on or following termination shall survive and continue in full force and effect including without limitation the following paragraphs: paragraph 1 (Your Agreement with iomart), paragraph 2 (Terminology), paragraphs 3.1 & 3.2 (Order Process), paragraph 4.4 (The Services that iomart will provide) paragraphs 5.5-5.8 (Licences), paragraphs 6.3, 6.4, 6.6, 6.8 & 6.9 (Our Commitments to one another) paragraphs 7.1 - & 7.9 (inclusive) (payment of invoices), paragraph 9 (Protection of iomart), paragraph 10 (limits of liability), paragraphs 11.6 - 11.12 (termination), paragraph 12 (protection of confidential information), paragraph (general).

12. Protection of Confidential Information

12.1. **Information concerned.** Each of us acknowledges that we will have access to certain confidential information of the other party concerning the other party's business, financial information, pricing, plans, customers, technology, and products, including the terms and conditions of the Agreement, proprietary software and customer information ("**Confidential Information**").

12.2. **Maintaining secrecy.** Each of us agrees that except as expressly permitted under this Agreement or as required to perform the Services, we will not use in any way, for our own account or the account of any third party, nor disclose to any third party, except as required by law or as reasonably necessary to that party's professional advisors (or in iomart's case, to the other operators of iomart's global network), any of the other party's Confidential Information and that we will each take reasonable precautions to protect the confidentiality of that information.

12.3. **Exceptions.** Information will not be deemed Confidential Information if that information: (a) was already known or becomes known to the receiving party from a source other than the disclosing party; (b) becomes publicly known or becomes no longer secret or confidential, except through a breach of an agreement by the receiving party; (c) is independently developed by the receiving party; or (d) is required to be released by law or regulation, provided that the receiving party promptly informs the disclosing party in writing of the impending release, and the releasing party co-operates fully with the disclosing party to minimise the extent of the release.

12.4. **Publicity.** iomart shall be entitled to reference you as its customer, including use your name, logo and other trade mark in its publicity materials including but not limited to press releases and online marketing. You will also provide,

from time to time, verbal customer references regarding the Services and iomart's delivery of the Services to other customers or potential customers of iomart.

13. Protection of Personal Data

13.1 In this paragraph, the terms "Personal Data", "Controller", "Processor", "Data Subject", "Processing", "Data Protection Impact Assessments" and "Personal Data Breach" have the meanings given in Data Protection Legislation.

13.1.1. Duration of Processing: The term of this Agreement and thereafter to the extent required to exercise rights or perform obligations under this Agreement.

13.1.2. Nature of Processing: Collecting, recording, organizing, storing, restricting, deleting data

13.1.3. Purpose of Processing: For the provision of the Services pursuant to the Agreement to you

13.1.4. Personal Data categories of processing: as set out in the Order Form

13.1.5. Data Subjects: as set out in the Order Form

13.2 The parties acknowledge that the factual arrangement between them dictates the classification of each party as either a Controller or Processor under Applicable Data Protection Law. Notwithstanding the foregoing, the parties acknowledge that:

13.2.1. where iomart only provides colocation services under the Agreement, iomart will not be a Processor; and

13.2.2. where Personal Data is not accessible or likely to be accessible by iomart, iomart will not be a Processor,

and therefore, in either case, the obligations of paragraphs 13.3 to 13.7 shall not apply.

13.3 Subject to paragraph 13.2, with respect to the party's rights and obligations under the Agreement, the parties agree that you are the Controller and that iomart is the Processor. Accordingly, you retain control of the Personal Data and remain responsible for your compliance obligations under the Data Protection Legislation, including but not limited to, providing any required notices and obtaining any required consents, and for the written processing instructions given to iomart.

13.4 Where iomart processes Personal Data as a Processor on your behalf, it shall:

13.4.1. Process the Personal Data only in accordance with instructions from you (which may be specific instructions or instructions of a general nature as set out in the Agreement or as otherwise notified by you to iomart during the term of the Agreement) and in accordance with the details in the Annex to this Agreement;

13.4.2. take reasonable steps to ensure the reliability of any iomart staff who have access to the Personal Data, and ensure such staff are trained in the care and handling of Personal Data and have given appropriate binding undertakings of confidentiality;

13.4.3. notify you without undue delay and, in any event, within five business days, if it receives:

13.4.3.1. a request from a Data Subject to have access to their Personal Data; or

13.4.3.2. a complaint or request relating to your obligations under Applicable Data Protection Law;

13.4.4. taking into account the nature of the Processing, assist and cooperate with you at your cost (including by using appropriate technical and organisational measures, in so far as this is possible), to respond to complaints or requests from Data Subjects exercising their rights under Applicable Data Protection Law, including by:

13.4.4.1. promptly providing you with full details of a complaint or request received by iomart; and

13.4.4.2. upon your request, promptly providing information which you require in order to comply with a request from a Data Subject exercising their rights under Applicable Data Protection Law (including a 'subject access request').

13.4.5. permit you or your representatives access to any location where iomart processes Personal Data during normal business hours to inspect and audit, on reasonable prior notice and no more than once per annum, iomart's data Processing activities and comply with all reasonable requests or directions by you to enable you to verify and/or procure that iomart is in full compliance with its obligations under this paragraph 13.4. You or your representative shall be required to adhere to any applicable iomart site and security policies in the performance of such an audit or inspection. Any information disclosed to you during or as a result of such access, inspection or audit shall be deemed to be the Confidential Information of iomart.

13.4.6. provide, following your request and at your cost, a written description of the technical and organisational methods employed by iomart for Processing Personal Data (within the timescales reasonably required by you);

13.4.7. be entitled to engage sub-Processors (as a subcontractor), subject to:

13.4.7.1. the relevant subcontractor being engaged by way of a written contract which imposes obligations on the subcontractor which are at least equivalent to the obligations imposed on iomart pursuant to this paragraph 13.4; and

13.4.7.2. the relevant subcontractor providing sufficient guarantees to iomart in terms of expert knowledge, reliability, and resources to implement technical and organisational measures which will meet the requirements of Applicable Data Protection Law,

and all sub-Processors engaged by iomart as at the Effective Date shall be deemed authorised;

13.4.8. in addition to the sub-Processors engaged pursuant to paragraph 13.4.7, be entitled to engage additional or replacement sub-Processors (as a subcontractor), subject to:

13.4.8.1. the provisions of paragraph 13.4.7.1 and 13.4.7.2 being applied; and

13.4.8.2. iomart notifying you of the additional or replacement sub-Processor,

and where you object to the additional or replacement Processor, the parties shall discuss the objection in good faith;

13.4.9. save where such countries have been deemed by the Information Commissioner's Office or the European Commission to be providing an adequate level of protection pursuant to the relevant provisions of Applicable Data Protection Law not Process Personal Data outside the UK or European Economic Area without your prior written consent and, where you consent to a transfer, to comply with any reasonable instructions notified to it by you. Notwithstanding the foregoing, iomart is expressly permitted and instructed by you that it may transfer Personal Data to any iomart subsidiary and any iomart subcontractor, subject to first ensuring that adequate protections are in place to protect the Personal Data consistent with the requirements of Applicable Data Protection Law;

13.4.10. at your cost and taking into account the nature of the Data Processing and the information available to iomart, assist you in ensuring your compliance with your obligations to:

- 13.4.10.1. ensure the security of the Processing;
- 13.4.10.2. notify Personal Data Breaches to the ICO;
- 13.4.10.3. notify Personal Data Breaches to the Data Subjects;
- 13.4.10.4. carry out Data Protection Impact Assessments; and
- 13.4.10.5. consult the ICO in respect of Data Protection Impact Assessments, pursuant to Articles 32 to 36 of the GDPR (respectively); and
- 13.4.11. notify you without undue delay upon becoming aware of a Personal Data Breach.
- 13.5 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purpose of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, you and iomart will take, implement and maintain such technical and organisational measures as are appropriate to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure.
- 13.6 Each party shall comply at all times with Applicable Data Protection Law and shall not perform its obligations under the Agreement in such a way as to cause the other to breach any of its applicable obligations under Applicable Data Protection Law.
- 13.7 To the extent that iomart's performance of its obligations under the Agreement involves the Processing of Personal Data on your behalf, you shall ensure:
 - 13.7.1. you are not subject to any prohibition or restriction which would prevent or restrict you from disclosing or transferring such Personal Data to iomart, as required under the Agreement; and
 - 13.7.2. you have lawful grounds for Processing such Personal Data, including (if applicable) the consent of the individual to whom such Personal Data relates (and that such consent shall be valid under Applicable Data Protection Law).
- 13.8 Where under Applicable Data Protection Law (including without limitation Article 82 of UK GDPR and any applicable Law where you and the iomart may incur joint and several liability as Controller and Processor with any other person) iomart incurs any costs, liability, damages, claims or expenses, you shall indemnify iomart on demand against all such costs, liability, damages, claims or expenses, save for such liability as corresponds directly to iomart's part of the responsibility for the damage caused by iomart's breach of the obligations of Applicable Data Protection Law or the Agreement.
- 13.9 **International Customers.** You acknowledge and agree that if you are a business located in a territory outside the UK, it is your responsibility to ensure compliance with Applicable Data Protection Law (or equivalent) in relation to transfers of your personal data from iomart to you.
- 13.10 **PCI DSS Requirements.** In accordance with best practice as described in the Payment Card Industry Data Security Standard (PCI DSS) scheme to safeguard sensitive credit and/or debit card data, should you use the Services to store, process or transmit credit or debit card information you will:
 - 13.10.1. inform us in writing as soon as practicable and, in any event, before you do so;
 - 13.10.2. comply with the PCI DSS requirements; and
 - 13.10.3. you will take all necessary steps to ensure you are properly advised by your card acquirer or a PCI DSS Qualified Security Assessor (QSA) with regards to your obligations and appropriateness of your Service.
- 13.11 **Business Continuity.** iomart warrants that it has and will undertake to maintain a business continuity plan for its operations that is consistent with the international standards ISO 22301:2019, ISO 27001:2013 and ISO 9001:2015. While iomart takes all steps listed in the Agreement to protect your data, this does not constitute an absolute guarantee that a third party will not try to access, interrupt, delete or compromise your data. You are therefore responsible for determining the ultimate safety and integrity of your data.
- 14. **Intellectual Property**
 - 14.1 Nothing in this Agreement affects either party's rights in and to any IPR that existed prior to the date of this Agreement (including pre-existing IPR of either party contained in or relating to Confidential Information).
 - 14.2 You acknowledge and agree that, as between the parties, iomart and/or its licensors own all IPR in the Work Product and in all other materials connected with the provision of the Services and/or developed or produced in connection with this Agreement by iomart, sub-contractors or agents. Except as expressly stated in this Agreement, this Agreement does not grant you any rights to such IPR.
 - 14.3 iomart acknowledges and agrees that you own and retain all rights, title and interest in and to the Customer Data. Save to the extent necessary for the provision of the Services and performance of its obligations under this Agreement, iomart shall have no rights to access, use or modify the Customer Data unless it has your prior written consent.
 - 14.4 iomart grants you (for the term of this Agreement only) a non-transferable, non-exclusive, royalty-free, worldwide licence to use, all of the iomart IPR solely to the extent and as incorporated by iomart into the Work Product solely in connection with your receipt of the Services in accordance with this Agreement. Such licence will terminate on the termination or expiry of this Agreement.
- 15. **General Provisions**
 - 15.1 **Unenforceable Provisions.** If any part of the Agreement is found by a court or other competent authority to be illegal or unenforceable then that part shall be deemed not to form part of this Agreement and the rest of the Agreement will remain in full force and effect.
 - 15.2 **Circumstances outside either party's control.** Except for the obligation to pay money, neither you nor iomart will be liable for any failure or delay in meeting our respective obligations under the Agreement, or for credits due under the SLA, due to any cause beyond its reasonable control, including act of war, acts of God, earthquake, flood, embargo, riot, terrorist activity, sabotage, labour shortage or dispute, governmental order or act or failure of the Internet (a "**Force Majeure Event**"), provided that whichever of us is affected: (a) gives the other prompt notice of the situation; and (b) uses reasonable commercial efforts to correct promptly the failure or delay in performance.
 - 15.3 **No property rights.** The Agreement is a services agreement and is not intended to and does not grant a lease or licence over any real or personal property. In particular, you acknowledge and agree that you have not been granted any real property interest in any Data Centre (or, if applicable to the Services or equipment to be supplied to you, any space in any iomart data centre where Your Equipment is kept) or in iomart's other premises (including the location where the Services are provided).
 - 15.4 **Transfer of rights.** The Agreement is personal to you, and you may not assign or transfer your rights or subcontract your obligations under the Agreement either in whole or in part without iomart's prior written consent. iomart will not unreasonably refuse that consent. iomart may assign or transfer its rights or subcontract its obligations under the Agreement either in whole or in part.
 - 15.5 **Notices.** Any notice given under the Agreement must be in writing and may be delivered personally, deposited with an overnight courier, or mailed by registered or certified mail,

return receipt requested, postage prepaid, in each case to the registered address or such other address as either of us may nominate in writing. That notice will be deemed to have been given on the date delivered, or 5 days after mailed or sent, whichever is earlier. Notices will not be validly sent by e-mail. Notices sent to iomart must be addressed to the Chief Financial Officer.

15.6 Status of the parties. iomart and you are independent contractors, and the Agreement does not create any partnership, joint venture or agency or employee relationship. Neither of us has authority to enter into any contract on behalf of the other.

15.7 Changes to the Agreement. The Agreement may only be amended if both of us agree in writing.

15.8 Dispute resolution. If a dispute arises between you and iomart relating to the Agreement you and iomart will use reasonable commercial efforts to resolve the dispute at senior management level within 28 days of the dispute arising, failing which:

15.8.1. you and iomart agree that, within 14 days of the failure to resolve the dispute, either of us may pass the dispute to an Alternative Dispute Resolution ("ADR") procedure officer of the Centre for Dispute Resolution ("CEDR") as adopted by a suitable qualified mediator in London, England appointed by the senior executive officer of CEDR. Each of us will meet our own costs in those proceedings unless we agree otherwise as part of any settlement. If the dispute has not been resolved within a further 28 days or if either of us refuses or ceases to participate in an ADR procedure, or you and iomart cannot agree on an ADR procedure within 14 days of the failure to resolve the dispute, either of us may refer the dispute to the English Courts; and

15.8.2. nothing in this paragraph 15.8 prevents either of us from going to court to seek a preliminary injunction or other order or to pursue other remedies at any time if either of us thinks that such an action is necessary.

15.9 Delay in exercising rights. If either of us does not exercise a right which we have under the Agreement or at law, or if either of us delays in exercising that right, we will not be prevented from exercising that right at a later date. No waiver by either party of any breach of or compliance with any provision of this Agreement shall be effective unless made in writing and signed by the waiving party.

15.10 Documents making up this Agreement. This Agreement comprises the complete agreement and understanding between us in relation to the relevant Services and replace any other agreement or understanding between us, written or oral. It does not include any marketing materials, tender documents or response to tender documents of any nature. If a conflict is identified between the Order Form, these Terms and Conditions, any Schedules or appendices and any other document otherwise attached or incorporated into this Agreement, the order of priority for the purposes of construction, is in descending order:

15.10.1. the Order Form;

15.10.2. any provision of the schedules that expressly takes precedence over these Terms and Conditions;

15.10.3. these Terms and Conditions;

15.10.4. the remaining provisions of the Schedules;

15.10.5. the appendices to the Schedules; and

15.10.6. any other document incorporated by express reference into this Agreement.

15.11 Governing law. The Agreement and any claims arising out of it or in connection with it (including non-contractual claims) will be governed by English law and both of us agree that the English Courts will have exclusive jurisdiction.