



XCD HR Limited

Terms & Conditions

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XCD HR Limited

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XCD HR LIMITED TERMS & CONDITIONS

These Terms & Conditions shall apply to all Contracts with XCD HR Limited ("XCD") in respect of licences for XCD software solutions and associated services. Defined terms are set out at Annex A.

1. USER LICENCES

- 1.1 Subject to the Client purchasing the User Licences in accordance with condition 2.2 and condition 5.1, the restrictions set out in this condition 1 and the other terms and conditions of the Contract, XCD grants to the Client a non-exclusive, non-transferable right to permit the Authorised Users to use the Subscription Services during the Licence Term solely for the Client's internal business operations save as provided in condition 1.4.
- 1.2 In relation to the Authorised Users, the Client undertakes that:
 - 1.2.1 the maximum number of Authorised Users shall not exceed the number of User Licences it has purchased from time to time;
 - 1.2.2 it will not allow any User Licence to be used by more than one individual Authorised User unless it has been reassigned permanently and in its entirety to another Authorised User; and
 - 1.2.3 each Authorised User shall keep a secure password for the use of the Subscription Services and shall keep their password confidential.
- 1.3 The Client shall permit XCD to access its records and systems in order to provide technical support and where appropriate, to audit the Services to ensure compliance with the Contract. Such audit will be at XCD's expense, with reasonable prior notice, and in such a manner as not to substantially interfere with the Client's business provided that XCD's employees shall comply with the Client's facility rules, policies and guidelines communicated to XCD.
- 1.4 If the Client purchases an Outsourcing Licence, then notwithstanding conditions 1.1 and 1.2 above, the Client and its Authorised Users will, in addition to the same rights set out in condition 1.1, be licensed to make the Subscription and other Services available to its customers on terms similar to those contained in these Terms & Conditions.
- 1.5 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Subscription Services and, in the event of any such unauthorised access or use, promptly notify XCD.
- 1.6 Unless otherwise stated in the Service Order, the rights provided under this condition 1 are granted to the Client and any subsidiary, holding or associated or affiliated company of the Client from time to time ("**Client Affiliates**") provided that the Client shall procure its Client Affiliates comply with the terms of the Contract and shall be liable and responsible for: (a) the actions or omissions of the Client Affiliates in relation to the Client Affiliates' exercise of any such rights; (b) Client Affiliates' use of the Services; and/or (c) any breaches of the Contract by any Client Affiliate. For the avoidance of doubt, any entity ceasing to be a Client Affiliate shall cease to have the benefits, or the rights provided under the Contract to the Client.

2. ADDITIONAL USER LICENCES

- 2.1 Subject to condition 2.2, the Client may, from time to time during any Licence Term, purchase additional User Licences, with a minimum order size of 10 licences. XCD shall grant access to the Subscription Services to such additional Authorised Users in accordance with the provisions of the Contract.

- 2.2 Licences are normally provisioned within 48 hours and XCD will issue an invoice in respect of the additional Licence Fees as set out in the Service Order, and, if such additional User Licences are purchased by the Client part way through the Initial Licence Term or any Renewal Period (as applicable), such fees shall be pro-rated for the remainder of such period.

- 2.3 The notice period required to reduce the number of licences in the Client's Org for any Renewal Period is 60 days prior to the commencement of the Renewal Period and will be effective for the 12 months of that Renewal Period.

3. XCD'S OBLIGATIONS

- 3.1 XCD shall, during the Licence Term, provide the Services to the Client on and subject to the terms of the Contract and with all reasonable skill, care and diligence.
- 3.2 XCD warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract.
- 3.3 XCD shall use commercially reasonable endeavours to make the Subscription Services available during Business Hours, except for unscheduled maintenance at any time, provided that XCD shall use reasonable endeavours to give the Client at least 6 hours' notice in advance unless there is an urgent need to carry out maintenance in which case XCD shall provide such prior notice as is reasonably practicable. However, XCD does not warrant that the Client's use of the Subscription Services will be uninterrupted or error-free and the Client is responsible for procuring and maintaining adequate network connections and telecommunications links to access the Subscription Services and for testing the Subscription Services to ensure that they meet its requirements.
- 3.4 The Contract shall not prevent XCD from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Contract.
- 3.5 XCD shall use commercially reasonable endeavours (including effecting and maintaining industry and up to date standard virus checking solutions) to ensure that software relating to the Subscription Services is protected from, and remains free from, any virus.
- 3.6 XCD warrants that the Subscription Services used in accordance with the terms of the Contract will not infringe the intellectual property rights of a third party.

4. CLIENT'S OBLIGATIONS

- 4.1 The Client shall:
 - 4.1.1 make the payments referred to in the Service Order in accordance with condition 5;
 - 4.1.2 provide XCD with timely instructions and such information and materials as and when required to enable XCD to fulfil its obligations;
 - 4.1.3 comply with all applicable laws and regulations with respect to its activities under the Contract and not use the Services in any way which contravenes such laws and regulations, or which infringes the rights of any person; and

- 4.1.4 use commercially reasonable endeavours including effecting and maintaining industry and up to date standard virus checking solutions) to ensure neither it nor its Authorised Users introduce or permit the introduction of any virus or vulnerability into XCD's or the Platform Service's network and information systems or the Subscription Services; and
- 4.1.5 take all reasonable steps to ensure that Authorised Users comply with the terms of use in the Contract.
- 4.2 Subject to paragraph 1(d) of Annex B, the Client may upload Client Data and additional content to the Storage Space.
- 4.3 Except as may be allowed by any applicable law which is incapable of exclusion or as expressly permitted under the Contract, the Client shall not attempt to copy, modify, create derivative works from, download, display, transmit, distribute, reverse engineer or disassemble all or any portion of the Subscription Services. The Client shall not access all or any part of the Subscription Services in order to build a product or service which competes with the Subscription Services. Unless authorised through an Outsourcing Licence, the Client shall not use the Subscription Services to provide services to third parties or otherwise license, sell, rent, lease, transfer, assign, distribute the Subscription Services.
- 4.4 The Client shall not, and shall not cause or permit others to: (a) use the Subscription Services to harass any person; cause damage or injury to any person or property; publish any material that is false, defamatory, harassing or obscene; violate privacy rights; promote bigotry, racism, hatred or harm; send unsolicited bulk e-mail, junk mail, spam or chain letters; infringe property rights; or otherwise violate applicable laws, ordinances or regulations; (b) perform or disclose any benchmarking or availability testing of the Subscription Services; (c) perform or disclose any performance or vulnerability testing of the Subscription Services without XCD's prior written approval, or perform or disclose network discovery, port and service identification, vulnerability scanning, password cracking or remote access testing of the Subscription Services; or (d) use the Subscription to perform cyber currency or crypto currency mining ((a) through (d) collectively, the "Acceptable Use Policy"). In addition to other rights that XCD have in the Contract and, XCD shall have the right to take remedial action if the Acceptable Use Policy is violated, and such remedial action may include, without limitation, removing or disabling access to material that violates the policy or access to the Subscription Services.
- 4.5 The Client shall further comply with the terms & conditions set out in Annex B in connection with the Client's use of the Platform Service.
5. **PAYMENT TERMS**
- 5.1 The Client shall pay the Implementation Fee, the Licence Fees and any additional fees or charges in accordance with the Service Order and the details contained in invoices issued by XCD.
- 5.2 The Client will pay invoices within thirty (30) days from the date of receipt of the invoice. If XCD has not received payment of any undisputed Invoices within 60 days after the due date, and without prejudice to any other rights and remedies of XCD, XCD may, without liability to the Client, disable the Client's password, account and access to all or part of the Services and XCD shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid. In such circumstances XCD must provide at least 14 days' notice (email or written) prior to disabling the client's access. Interest shall accrue on such due amounts at an annual rate equal to 5% over the Bank of England base rate at the date the relevant invoice

was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.

- 5.3 All amounts and fees stated or referred to in the Contract are non-cancellable and non-refundable and are exclusive of value added tax, which shall be added to XCD's invoices at the appropriate rate.
- 5.4 The per-unit pricing is fixed for the first 12 months of the Initial Licence Term. Thereafter, XCD reserves the right to increase the Licence Fee annually by the increase on the Consumer Price Index in the previous 12-month period and will give at least 60 days' notice prior to the renewal date of any such increase.

6. TECHNICAL SUPPORT

- 6.1 XCD will, as part of the Subscription Services and at no additional cost to the Client, provide the Client with technical support during Business Hours at set out in Annex C.
- 6.2 XCD will provide training in the relevant software solutions packages including such on-site and Remote Training as specified in the Service Order and online training materials. Authorised Users must refer any queries regarding the Subscription Services to their HR Administrator, who shall use reasonable endeavours to resolve the query. If the HR Administrator is unable to resolve the query, it may be referred to XCD's technical support contact, whose contact information will be as notified to the Client. XCD will be obliged to provide technical support only to the HR Administrator and reserves the right to refer queries raised by other Authorised Users back to the HR Administrator.

7. LIMITATION OF LIABILITY

- 7.1 This condition 7 sets out the entire financial liability of the parties (including any liability for the acts or omissions of their employees, agents and sub-contractors) to each other in respect of any breach of the Contract; any use made by the Client of the Services or any part of them; and any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 7.2 XCD warrants that it will have and keep in force professional indemnity insurance, public liability insurance and employer's liability insurance to cover any claim made against it by the Client in relation to its delivery, installation, operation and maintenance of the Subscription Service. Such insurance will be for a sum of not less than £5,000,000 (five million pounds) in respect of professional indemnity insurance (including cyber and privacy coverage); £10,000,000 (ten million pounds) in respect of public liability insurance; and £10,000,000 (ten million pounds) in respect of employer's liability Insurance.
- 7.3 Except as expressly and specifically provided in the Contract:
- 7.3.1 the Client assumes sole responsibility for results obtained from its use of the Services, and for conclusions drawn from such use;
- 7.3.2 XCD shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to XCD by the Client in connection with the Services, or any actions taken by XCD at the Client's direction;
- 7.3.3 the Client acknowledges neither XCD nor Salesforce is responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data (including Client Data) over communications networks and facilities, including the Internet or otherwise caused by the Internet.
- 7.3.4 the parties acknowledge that SFDC (including any affiliate or member of the SFDC group) ("Salesforce")

is responsible, as part of the Platform Service, for implementing and maintaining back-up procedures in respect of Client Data stored and processed using the Subscription Services and that the Client has the option of implementing and maintaining additional back up procedures for such Client Data; and

7.3.5 Subject to condition 7.4, XCD shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss or corruption of data or information caused by Salesforce in connection with the provision of the Platform Service or Client's use of the Platform Service. For the avoidance of doubt, subject to this condition 7.3.5, XCD remains responsible for any direct and foreseeable loss of or corruption of data or information directly caused by XCD's breach of the Contract or negligent acts or omissions provided that the Client's sole and exclusive remedy shall be for XCD, at its own cost and expense, to use commercially reasonable endeavours to restore the lost or damaged data from the latest backup of such data maintained by Salesforce in accordance with the backup and archiving procedures implemented by Salesforce as part of the Platform Service (or, if applicable, the latest backup of such data maintained by the Client).

7.4 Nothing in the Contract excludes or limits: (a) either party's liability for death or personal injury caused by the other party's negligence; (b) either party's liability for fraud or fraudulent misrepresentation; (c) the liability of the Client to pay the Implementation Fee, the Licence Fees and any additional fees or charges in accordance with the Service Order due or arising pursuant to or otherwise in connection with the Contract; (d) either party's liability for infringement of the intellectual property rights of the other party including licences granted by the other party pursuant to the Contract; or (e) either party's liability to the extent such liability cannot be excluded or limited by law.

7.5 Subject to condition 7.3 and condition 7.4:

7.5.1 Except for liability or claims under the indemnities in condition 8, neither party shall be liable to the other party whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of revenue, loss of business, depletion of goodwill and/or similar losses, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract;

7.5.2 Subject to condition 7.5.3, each party's total aggregate liability to the other party in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total aggregate Licence Fees paid or payable by the Client during the 12 months immediately preceding the date on which the claim arose; and

7.5.3 Each party's total aggregate liability to the other party in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise for:

- (a) Data Protection Losses (as defined in Annex D) and/or other liability or claim arising from breach of its obligations under condition 11 and/or Annex D;
- (b) any breach of confidence (under condition 12); or
- (c) any liability or claims arising under the indemnity in condition 8.1 (in the case of XCD) or condition 8.2 (in the case of the Client),

in each case shall not exceed £500,000.

7.6 Except as otherwise expressly provided in the Contract:

7.6.1 all warranties, conditions and all other terms implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract;

7.6.2 the Platform Service is made available and provided by XCD on a 'as is' and 'as available' basis and XCD provides no warranties or guarantees in connection with the provision of the Platform Service by Salesforce (including no warranties or guarantees in connection with the quality, performance or availability of the Platform Service) or the Client's use of the Platform Service provided that if the Platform Service has the benefit of any warranty or guarantee given by Salesforce in its contract with XCD or as set out in Annex B and Salesforce fails to provide the Platform Service in accordance with such warranty or guarantee, XCD will use commercially reasonable endeavours to liaise and manage communication with Salesforce in connection with such failure and request, on behalf of the Client, that Salesforce take such remedial action as may be reasonably necessary to ensure compliance of the Platform Service with such warranty or guarantee as soon as reasonably practicable. XCD shall monitor and manage such remedial action on behalf of the Client; and

7.6.3 nothing in condition 7.6.2 shall exclude or limit XCD's liability under condition 11 and Annex D including to the extent XCD processes Client Data as part of the Subscription Services.

8. INDEMNITY

8.1 XCD shall defend, indemnify and hold the Client harmless against any and all claims, actions, proceedings, losses, damages, expenses and costs (whether direct, indirect or consequential and including without limitation court costs and reasonable legal fees) incurred or suffered by the Client arising out of or in connection with any third party claim that the Subscription Services infringe the intellectual property rights of the third party provided that, in the event of a third party claim made against the Client that may give rise to a claim under this indemnity: (a) XCD is given prompt notice of any such claim; (b) XCD is given sole authority to defend or settle the claim; (c) the Client provides reasonable co-operation to XCD in the defence and settlement of such claim, including taking such action as XCD may request to avoid, dispute, compromise or defend the claim, at the XCD's expense; (d) the Client not making any admission of liability, agreement or compromise in relation to a claim without the prior written consent of XCD; and (e) the Client using all reasonable endeavours and commercial efforts to mitigate any loss in connection with such claim.

8.2 The Client shall defend, indemnify and hold XCD harmless against any and all claims, actions, proceedings, losses, liabilities, damages, expenses and costs (whether direct, indirect or consequential and including without limitation court costs and reasonable legal fees) incurred or suffered by XCD and arising out of or in connection with:

8.2.1 the Client's misuse of the Subscription Services including any use of the Subscription Services which is not authorised or permitted by or outside the scope of the Contract or any use which contravenes any applicable law or rights of any person; and/or

8.2.2 any claim by Salesforce in connection with the Client's use of Platform Service in breach of the terms of the Contract (including Annex B) relating to the Platform Service supplied by Salesforce,

provided that, in the event of a third party claim made against XCD that may give rise to a claim under the

indemnity under condition 8.2.1: (a) the Client is given prompt notice of any such claim; (b) the Client is given sole authority to defend or settle the claim; (c) XCD provides reasonable co-operation to the Client in the defence and settlement of such claim, including taking such action as the Client may request to avoid, dispute, compromise or defend the claim, at the Client's expense; (d) XCD not making any admission of liability, agreement or compromise in relation to a claim without the prior written consent of the Client; and (e) XCD using all reasonable endeavours and commercial efforts to mitigate any loss in connection with such claim.

9. TERM AND TERMINATION

- 9.1 The Contract shall, unless otherwise terminated as provided in this condition 9, commence on the Start Date and shall continue for the Initial Licence Term of 3 years, and thereafter, the Contract shall be automatically renewed for successive periods of 12 months (or such longer period as may be specified in the Service Order) (each a **"Renewal Period"**) and the Initial Licence Term together with any subsequent Renewal Periods shall constitute the "Licence Term".
- 9.2 Either party may terminate the Contract by giving written notice to the other at least 60 days before the end of the Initial Licence Term or any Renewal Period, in which case the Contract shall terminate upon the expiry of the applicable Initial Licence Term or Renewal Period.
- 9.3 Dispute Resolution
- 9.3.1 In the event of any dispute between the parties arising out of or in connection with the Contract, prior to taking any legal action, the parties will first try and settle such dispute by negotiation between executive members of the parties. Should this negotiation fail to reach settlement within twenty-one (21) working days of notification of a dispute by either part to the other, then either party may serve notice in writing (**"ADR Notice"**) to the other requesting a mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure (the Model Procedure)).
- 9.3.2 The procedure in the Model Procedure will be amended to take account of any relevant provisions in the Contract in relation to the conduct of the mediation (**"Mediation Agreement"**)
- 9.3.3 The mediation will take place in England and the language of the proceedings will be in English
- 9.3.4 The Mediation Agreement shall be governed by and construed and take effect in accordance with English Law. The courts of England shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of or in connection with the mediation.
- 9.3.5 The mediation will commence no later than twenty-eight (28) days after the ADR Notice. No party may commence any court proceedings or arbitration in relation to any dispute arising out of the Contract until the parties have attempted to settle such dispute by mediation and that mediation has terminated.
- 9.3.6 The mediation shall be conducted without prejudice to the rights of the parties in future proceedings
- 9.3.7 Each party will be responsible for their own costs and time required for Dispute resolution.
- 9.3.8 Any fees payable to third parties for dispute resolution will be agreed in advance between the parties and split equally between the parties.
- 9.4 Either party may terminate the Contract on written notice if:

- 9.4.1 the other party commits a material breach of the Contract and, if the breach is capable of remedy, fails to remedy the breach within 60 days of a written notice to do so;
- 9.4.2 except in the case of a failure to make any payment due under the terms of the Contract, in which case such failure to pay must be remedied within thirty (30) days)
- 9.4.3 the other party becomes insolvent; makes or proposes any scheme or arrangement with its creditors or any procedural step is taken in relation to any of the above; or it ceases or threatens to cease to exist or to carry on trading.
- 9.4.4 either party fails to comply with any agreed output of the Dispute Resolution process
- 9.5 On expiry or termination of Contract pursuant to condition 9.4: (a) all licences granted under the Contract shall cease and terminate and the Client shall cease to be able to access or use the Subscription Services unless otherwise agreed by XCD; and (b) the Client shall immediately pay all outstanding invoices properly submitted by XCD under and in accordance with the Contract.
- 9.6 The Client must extract all Client Data from the Subscription Services within 14 days from the date of termination of the Contract and XCD will provide the Client with reasonable support to achieve this. After 30 days, upon written instructions of the Client, XCD shall arrange for Client Data, and Personal Data as provided in Data Protections Laws, to be deleted from all computer systems, servers and back-up copies.
- 9.7 Termination of the Contract shall not affect any accrued rights or liabilities of either party or affect the coming into force or the continuance in force of any provision of the Contract which is expressly or by implication intended to come into or continue in force on or after such termination.
- ## 10. PROPRIETARY RIGHTS
- 10.1 The Client acknowledges and agrees that XCD and/or its licensors owns all intellectual property rights in the Services. Except as expressly stated herein, the Contract does not grant the Client any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks or other intellectual property rights (whether registered or unregistered), or any other rights or licences in respect of the Services.
- 10.2 XCD confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Contract.
- ## 11. CLIENT DATA
- 11.1 The Client owns the rights, title and interest in and to all of the Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data. It is the Client's sole responsibility for obtaining all rights related to the Client Data required by XCD to perform the Services.
- 11.2 If XCD processes any personal data on the Client's behalf when performing its obligations under the Contract, the parties acknowledge and agree that the Client is the data controller and XCD is a data processor and, in addition to the provisions in Annex D:
- 11.2.1 the Client shall ensure that it is entitled (whether by consent, privacy notice, legitimate basis or grounds or otherwise) to transfer and/or make available the relevant personal data to XCD (and its sub-processors) so that XCD (and its sub-processors) may lawfully use, process and transfer the personal data in accordance with the Contract on the Client's behalf and in particular the Client shall ensure that the relevant data subjects/third parties have been informed (by privacy

notice or otherwise) of, and, where consent is relied upon as the basis to transfer personal data, have given their consent to, or (in all other cases) that it has such other legitimate basis or grounds for, such use, processing, and transfer as required by all applicable Data Protection Laws;

11.2.2 the Client acknowledges and agrees that the personal data may be accessed and/or processed in India on behalf of XCD (for processing by XCD HR Private Limited as XCD's sub-processor) in accordance with Data Protection Laws in order to provide the Services and XCD's other obligations under the Contract; and

11.2.3 the Client acknowledges that Client Data uploaded to XCD will be held and processed on servers and equipment in data centres managed by SFDC (as defined in Annex B) under the "SFDC Service Agreement" at Annex B. SFDC acts as a "sub-processor" and will safeguard client data in accordance with the data protection guidelines, and the data processing agreement between XCD and Salesforce. Client Data for UK and European clients will be stored in data centres within the United Kingdom or EU or such other territory as may be agreed between the parties from time to time.

11.2.4 The parties agree to comply with the terms of the Data Processing Agreement set out in Annex D.

11.3 XCD shall not be liable or responsible for any Client Data introduced or uploaded into the Subscription Services and/or Platform Service through any API or other interface mechanism not authorised or permitted by XCD from time to time. Any issues or problems with such Client Data shall not be covered by the Support Services and any support or related services provided by XCD in respect of such issues or problems shall be subject to additional charges.

12. CONFIDENTIALITY

12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that is or becomes publicly known other than through any act or omission of the receiving party; was in the other party's lawful possession before the disclosure; is lawfully disclosed to the receiving party by a third party without restriction on disclosure; is independently developed by the receiving party, which independent development can be shown by written evidence; or is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

12.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of the Contract. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Contract.

12.3 For the avoidance of doubt, either party may disclose the other party's Confidential Information to other members of its group where required to provide or receive the benefit of the Services and provided that (a) such Confidential Information shall still be subject to the restrictions of this condition 12; and (b) the relevant party shall procure that such members of its group comply with this condition 12 and shall be responsible for any breaches caused by such members.

12.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

12.5 The Client acknowledges that details of the Services, and the results of any performance tests of the Services, constitute XCD's Confidential Information. XCD acknowledges that the Client Data, including personal data as defined by Data Protection Laws, is the Confidential Information of the Customer.

12.6 All Confidential Information made available, including copies, shall be returned or destroyed upon either the completion of the Services, expiry or termination of the Contract or a request by the discloser.

12.7 Disclosure or misappropriation of Confidential Information in violation of the Contract may cause irreparable harm to the disclosing party and the parties to whom the disclosing party owes a duty of confidentiality. The effect of this harm may be difficult to ascertain, and remedies at law may be inadequate to protect against any actual or threatened breach. The disclosing party is therefore entitled to enforce the receiving party's obligations by seeking an order for injunction or specific performance, in addition to all other remedies available at law or in equity.

12.8 This condition 12 shall survive termination of the Contract, however arising.

13. MARKETING

13.1 Subject to the Client's prior written approval, XCD may include the Client's name and/or logo in XCD promotional materials and communications.

14. BRIBERY

14.1 XCD must not offer to any person any gift to persuade or reward them for doing or not doing anything relating to the award of the Contract or any other agreement with the Client, nor must XCD offer any gift to any person to persuade or reward them for special treatment to XCD following the award of the Contract to XCD.

14.2 If XCD offers any gift or reward or commits any offence under the Bribery Act 2010 the Client will have the right to determine the Contract by written notice having immediate effect and to recover from XCD any losses arising therefrom.

15. DISCRIMINATION

15.1 XCD will not unlawfully discriminate within the meaning and scope of the Equalities Act 2010 or any United Kingdom statutory instrument, byelaw or legislation relating to equal opportunities which may be in force or come into force during the period of the Contract.

16. FORCE MAJEURE

16.1 Neither party shall have any liability to the other party under the Contract if it is prevented from or delayed in performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the affected party or any other third party), failure of a utility service or transport or telecommunications network, power outage, internet backbone failure, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or pandemic or epidemic, provided that the other party is notified of such an event and its expected duration.

16.2 The affected party shall use reasonable efforts to mitigate the effect of the force majeure event on the non-affected party and to minimize the duration of the force majeure event.

16.3 If a force majeure event continues for a period of 30 days or longer, and the affected party is delayed or

unable to perform under the Contract as a result of such force majeure event, then either party shall have the right to terminate the Contract upon written notice to the affected party.

17. **WAIVER**

- 17.1 The failure of either party to enforce or to exercise any term or right under the Contract shall not be a waiver of such term or right and shall not affect such party's right to later enforce or exercise it.

18. **SEVERANCE**

- 18.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

19. **ENTIRE AGREEMENT**

- 19.1 The Contract, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 19.2 Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on, and has no remedy in respect of, any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

20. **ASSIGNMENT**

- 20.1 Subject to condition 20.2, either party may not, without prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. However, any such request may not be unreasonably withheld.
- 20.2 XCD shall be permitted to subcontract or delegate its obligations in part to any affiliate or subsidiary of XCD, independent contractors and consultants or third party sub-processors of Client Data.

21. **THIRD PARTY RIGHTS AND INDEPENDENT CONTRACTORS**

- 21.1 Subject to paragraph 15 of Annex B, the Contract does not confer any rights on any person or party (other than the parties to the Contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 21.2 In connection with the Contract, each party is separate and independent from the other and as such will not have any authority to bind or commit the other. Nothing in the Contract shall be deemed or construed to create a joint venture, partnership, or fiduciary or agency relationship between the parties

22. **NOTICES**

- 22.1 Any notice required to be given under the Contract may be signed electronically and sent via e-mail or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Contract, or such other address as may have been notified by that party for such purposes.

23. **GOVERNING LAW AND JURISDICTION**

- 23.1 The Contract is governed by, and construed in accordance with, the law of England and Wales. The

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

24. **Software Version and Upgrades**

- 24.1 XCD are committed to a process of continuous improvements into its product from a capability and technical perspective. As such, there is a significant investment from the Product and Development teams into new features, innovation and also to keep current with the Salesforce Platform Service upon which the product is developed. XCD therefore reserves the right to update and make changes to the specification and functionality of the Subscription Services from time to time.
- 24.2 To ensure that customers remain on a modern, supported version (both from an XCD and a Salesforce Platform Service perspective), customers must commit to taking at least one upgrade of their XCD packages per annum, and their live version should not be more than 12 months older than the latest release from XCD.
- 24.3 XCD will, through their Customer Success Manager work with customers to agree and schedule upgrades in line with this policy. There may be times where the customer or XCD need additional time to plan the upgrade and implement this through to customer live environments. Where this exceeds the 12-month window, this must be agreed by both XCD and the Client and an Active Upgrade Project must be in place.
- 24.4 Where customer elects not to adhere to the upgrade to a supported version then XCD may for a period of a further 12 months levy an increased support premium (to a maximum of 40% of the annual recurring licence). However, customers accept the risk that Salesforce themselves as Platform Service providers may end of life elements that render the XCD version inoperable should a customer opt to not upgrade.

25. **CONTRACT AND ORDER OF PRECEDENCE**

- 25.1 The Contract shall consist of:
- 25.1.1 these Terms & Conditions, including the Annexes;
 - 25.1.2 the Service Order.
- 25.2 In the event of any conflict or inconsistency between the documents comprising the Contract, the highest ranked document as listed below shall take prevail and take precedence:
- 25.2.1 The Service Order(s);
 - 25.2.2 Annex B;
 - 25.2.3 Annex D;
 - 25.2.4 Annex C;
 - 25.2.5 Annex A; and then
 - 25.2.6 these Terms & Conditions (other than the Annexes).

Annexes:

A. Definitions & Interpretation

B. SFDC Service Agreement

C. Technical Support SLA

D: XCD Data Processing Agreement

Signed by Andrew Bray

for and on behalf of XCD HR Limited

Title: Chief Executive Officer

Date:

Signed by:

for and on behalf of

Title:

Date:

Annex A: Definitions & Interpretation

Unless the context requires otherwise, the following words and expressions shall have the meanings set opposite them.

"Annexes"	Annex A (Definitions & Interpretation), Annex B (the SFDC Service Agreement), Annex C (the Technical Support Service Level Agreement) and D (Data Processing Agreement);	"Outsourcing Company"	a Client authorised by XCD to provide services in the course of its business to its clients consisting of the licence of XCD;
Active Upgrade Project	an agreed project between XCD and the Client with a signed service order for the upgrade of the customer environment to the Latest Version;	"Outsourcing Licence"	the licence purchased by an Outsourcing Company entitling it to make XCD available to its clients;
"Authorised Users"	those employees, agents and independent contractors of the Client who are authorised by the Client to use the Subscription Services and other Services. In the case of an Outsourcing Licence, Authorised Users shall include employees, agents and independent contractors of those outsourcing companies to which the Client makes XCD and the Subscription Services available under the terms of the Contract;	Org	the Client's software environment for XCD residing on the Platform Service;
"Business Hours"	8.00 am to 6.00 pm, Monday to Friday, UK time, except public holidays;	"Platform Service"	Salesforce online, web-based platform service used to provide the Subscription Services;
"Client"	the client identified in the Service Order;	Package	an individual component from XCD that makes up the core solution and optional extensions for example "Recruitment";
"Client Data"	the data inputted by the Client and its Authorised Users, for the purpose of using the Services;	"Remote Training"	m training delivered by XCD to the Client remotely via a web-based conferencing service or similar system.
"Confidential Information"	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in condition 12;	"Renewal Period"	has the meaning given in condition 9.1.;
"Contract"	the contract comprising the Service Order, the Terms & Conditions and the Annexes;	"Service Order"	the service order signed by the Client and XCD to which the Terms & Conditions are attached; or any subsequent service order signed by both parties;
"Data Protection Laws"	has the meaning given in paragraph 1.1.2 of Annex D;	"Services"	the services provided by XCD to the Client under the Contract including the Subscription Services and all software, support services and professional services;
"XCD"	XCD HR Limited and any affiliate and subsidiary companies;	"Subscription Services"	the Services provided by XCD comprising the subscription online web based access to and use of the XCD application known as XCD HR, excluding, for the avoidance of doubt, the Platform Service.
"HR Administrator"	an Authorised User who has been trained by XCD in the use of XCD;	"Support Services"	the Services comprising the technical support services provided by XCD pursuant to condition 6.1 and Annex C;
"Implementation Fee"	the implementation fee payable by the Client to XCD as set out in the Service Order;	"Start Date"	the date shown in the Service Order;
"Initial Licence Term"	the period defined in the Service Order commencing on the Start Date;	"Storage Space"	the data and file storage space provided by XCD as part of the Services, which is 20mb of data and 612mb of file storage space per User Licence, or such other amount as the parties shall from time to time agree, together with such additional data and file storage space that the Client may purchase from XCD;
"Licence Fees"	the licence fees payable by the Client to XCD for the User Licences, as set out in the Service Order;	"Terms & Conditions"	the terms & conditions to which this Annex is attached;
"Licence Term"	has the meaning given in condition 9.1;	"User Licences"	the user licences purchased by the Client which entitle Authorised Users to access and use the Subscription Services and other Services in accordance with the Contract.
Latest Version	the most up to date, released and generally available version of each XCD Package Software;		
Mediation	a service offered by a third party and registered Mediator such as CEDR;		

Condition headings shall not affect the interpretation of the Terms & Conditions.

Annex B: SFDC Service Agreement

“**AppExchange**” means the online directory of on-demand applications that work with the SFDC Service, located at <http://www.appexchange.com> or at any successor websites.

“**Customer Data**” means all electronic data or information submitted by You as and to the extent it resides in the Platform or SFDC Service.

“**Platform**” means the online, Web-based platform service provided by SFDC to Reseller in connection with Reseller’s provision of the Reseller Application to You.

“**Reseller**” means XCD HR Limited.

“**Reseller Application**” means XCD.

“**SFDC Service**” means the online, Web-based service generally made available to the public via <http://www.salesforce.com> and/or other designated websites, including associated offline components but excluding Third-Party Applications. For purposes of this SFDC Service Agreement, the SFDC Service does not include the Platform.

“**SFDC**” means salesforce.com EMEA Limited (now known as Salesforce UK Limited).

“**Third-Party Applications**” means online, Web-based applications and offline software products that are provided by third parties and are identified as third-party applications, including but not limited to those listed on the AppExchange and the Reseller Application.

“**Users**” means Your employees, representatives, consultants, contractors, agents and third parties with whom You conduct business who are authorized to use the Platform subject to the terms of this SFDC Service Agreement as a result of a subscription to the Reseller Application having been purchased for such User, and have been supplied user identifications and passwords by You (or by SFDC or Reseller at Your request).

“**You**” and “**Your**” means the customer entity which has contracted to purchase subscriptions to use the Reseller Application subject to the conditions of this SFDC Service Agreement, together with any other terms required by Reseller.

1. Use of Platform.

(a) Each User subscription to the Reseller Application shall entitle one User to use the Platform via the Reseller Application, subject to the terms of this SFDC Service Agreement, together with any other terms required by Reseller. User subscriptions cannot be shared or used by more than one User (but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment with You or otherwise changed job status or function and no longer require use of the Platform). For clarity, Your subscription to use the Platform hereunder does not include a subscription to use the SFDC Service generally or to use it in connection with applications other than the Reseller Application. If You wish to use the SFDC Service or any of its functionalities or services other than those included in the Reseller Application, or to create or use additional custom objects beyond those which appear in the Reseller Application in the form that it has been provided to You by Your Reseller, visit www.salesforce.com to contract directly with SFDC for such services. In the event Your access to the Reseller Application provides You with access to the SFDC Service generally or access to any Platform or SFDC Service functionality within it that is in excess of the functionality described in the Reseller Application’s user guide, and You have not separately subscribed under a written contract with SFDC for such access, then You agree to not access or use such functionality, and You agree that Your use of such functionality, or Your creation or use of additional custom objects in the Reseller Application beyond that which appears in the Reseller Application in the form that it has been provided to You by your Reseller, would be a material breach of this Agreement.

(b) If Your subscription to use the Platform hereunder includes Salesforce Mobile, You understand that prior to purchasing Salesforce Mobile, You should refer to the Mobile Device list located at <http://www.salesforce.com/mobile/devices/> for information on mobile devices that are supported by SFDC. You agree that SFDC will not provide any refunds, credits or other compensation or remedies in connection with Your purchase of Salesforce Mobile for any mobile devices that are not supported by SFDC. Third party mobile device, operating system and network connectivity providers may, at any time, cease distribution of, interrupt, deinstall and/or prevent use of Salesforce Mobile clients on supported mobile devices without entitling You to any refund, credit or other compensation or remedies.

(c) Notwithstanding any access You may have to the Platform or the SFDC Service via the Reseller Application, Reseller is the sole provider of the Reseller Application and You are entering into a contractual relationship solely with Reseller. In the event that Reseller ceases operations or otherwise ceases or fails to provide the Reseller Application, SFDC has no obligation to provide the Reseller Application or to refund You any fees paid by You to Reseller.

(d) You (i) are responsible for all activities occurring under Your User accounts; (ii) are responsible for the content of all Customer Data; (iii) shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Platform and the SFDC Service, and shall notify Reseller or SFDC promptly of any such unauthorized use You become aware of; and (iv) shall comply with all applicable local, state, federal and foreign laws and regulations in using the Platform.

(e) You shall use the Platform and the SFDC Service solely for Your internal business purposes and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Platform or the SFDC Service available to any third party, other than to Users or as otherwise contemplated by this SFDC Service Agreement; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children

or violates third party privacy rights; (iv) send or store viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Platform or the SFDC Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Platform or the SFDC Service or its related systems or networks.

(f) You shall not (i) modify, copy or create derivative works based on the Platform or the SFDC Service; (ii) frame or mirror any content forming part of the Platform or the SFDC Service, other than on Your own intranets or otherwise for Your own internal business purposes; (iii) reverse engineer the Platform or the SFDC Service; or (iv) access the Platform or the SFDC Service in order to (a) build a competitive product or service, or (b) copy any ideas, features, functions or graphics of the Platform or the SFDC Service.

2. **Third-Party Providers.** Reseller and other third-party providers, some of which may be listed on pages within SFDC's website and including providers of Third-Party Applications, offer products and services related to the Platform, the SFDC Service, and/or the Reseller Application, including implementation, customization and other consulting services related to customers' use of the Platform and/or the SFDC Service, and applications (both offline and online) that interoperate with the Platform and/or the SFDC Service such as by exchanging data with the Platform and/or the SFDC Service or by offering additional functionality within the user interface of the Platform and/or the SFDC Service through use of the Platform and/or SFDC Service's application programming interface. SFDC does not warrant any such third-party providers or any of their products or services, including but not limited to the Reseller Application or any other product or service of Reseller, whether or not such products or services are designated by SFDC as "certified," "validated" or otherwise. Any exchange of data or other interaction between You and a third-party provider, including but not limited to the Reseller Application, and any purchase by You of any product or service offered by such third-party provider, including but not limited to the Reseller Application, is solely between You and such third-party provider. In addition, from time to time, certain additional functionality (not defined as part of the Platform or SFDC Service) may be offered by SFDC or Reseller to You, for an additional fee, on a pass-through or OEM basis pursuant to terms specified by the licensor and agreed to by You in connection with a separate purchase by You of such additional functionality. Your use of any such additional functionality shall be governed by such terms, which shall prevail in the event of any inconsistency with the terms of this SFDC Service Agreement.
3. **Integration with Third-Party Applications.** If You install or enable Third-Party Applications for use with the Platform or SFDC Service, You acknowledge that SFDC may allow providers of those Third-Party Applications to access Customer Data as required for the interoperation of such Third Party Applications with the Platform or SFDC Service. SFDC shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Third-Party Application providers. In addition, the Platform and SFDC Service may contain features designed to interoperate with Third-Party Applications (e.g., Google, Facebook or Twitter applications). To use such features, You may be required to obtain access to such Third-Party Applications from their providers. If the provider of any such Third-Party Application ceases to make the Third-Party Application available for interoperation with the corresponding Platform or SFDC Service features on reasonable terms, SFDC may cease providing such Platform or SFDC Service features without entitling You to any refund, credit, or other compensation.
4. **Access by Reseller.** To the extent Reseller serves as the administrator of the Reseller Application for You, You acknowledge that your use of the Reseller Application may be monitored by Reseller and Reseller may access Customer Data submitted to the SFDC Service or Reseller Application. By agreeing to this SFDC Service Agreement, you are consenting to such monitoring and access by Reseller.
5. **Processing of Customer Data.** SFDC's processing of Customer Data is limited to the extent, and in such a manner as is necessary, for the performance of SFDC's obligations under its agreement with Reseller with regard to provisioning the Platform in connection with the Reseller Application and shall not include processing Customer Data for any other purpose without Your or Reseller's written instruction as appropriate. For clarity, the following processing is deemed an instruction by Reseller and/or You: (a) processing necessary for the performance of SFDC's obligations under its agreement with Reseller with regard to provisioning the Platform in connection with the Reseller Application; and (b) processing initiated by Your Users in their use of the Reseller Application.
6. **Return of Customer Data.** You have thirty (30) days from the date of termination your Reseller Application subscription term in which to request a copy of Customer Data, which will be made available to You in a .csv format. Any modifications to such Customer Data made by the Reseller Application outside of the Platform (if any) will not be captured in Customer Data as returned and the return of any such modified data shall be the responsibility of Reseller.
7. **Proprietary Rights.** Subject to the limited rights expressly granted hereunder, SFDC reserves all rights, title and interest in and to the Platform and the SFDC Service, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth in this SFDC Service Agreement. The Platform and the SFDC Service is deemed SFDC confidential information, and You will not use it or disclose it to any third party except as permitted in this SFDC Service Agreement.
8. **Compelled Disclosure.** If either You or SFDC is compelled by law to disclose confidential information of the other party, it shall provide the other party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.
9. **Suggestions.** You agree that SFDC shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into any SFDC products or services any suggestions, enhancement requests, recommendations or other feedback provided by You or Your Users relating to the operation of the Platform and/or the SFDC Service.
10. **Suspension and Termination.** Your use of the Platform and the SFDC Service may be immediately terminated and/or suspended upon notice due to (a) a breach of the terms of this SFDC Service Agreement by You or any User, (b) the termination or expiration of Reseller's agreement with SFDC pursuant to which Reseller is providing the Platform as part of the Reseller Application to You, and/or (c) a breach by Reseller of its obligations to SFDC with respect to the subscriptions it is providing to You in connection with this SFDC Service Agreement. If You use the Reseller Application in combination with a SFDC Service Org other than the Org provisioned solely for use with the Reseller Application (a "Shared org") You acknowledge and understand that (i) access to such Org, including the Reseller Application used in connection with such Org, may be suspended due to Your non-payment to SFDC or other breach of Your Agreement with SFDC, and (ii) in the event Your relationship with SFDC is terminated as a result of non-payment or other material breach of Your agreement with SFDC, Your Platform subscriptions would also be terminated. In no case will any such termination or suspension give rise to any liability of SFDC to You for a refund or other compensation.

11. **Subscriptions Non-Cancelable.** Subscriptions for the Platform are non-cancelable during a subscription term, unless otherwise specified in Your agreement with Reseller.
12. **No Warranty.** SFDC MAKES NO WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO WITH RESPECT TO THE PLATFORM, THE SFDC SERVICE, AND/OR THE RESELLER APPLICATION, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SFDC DISCLAIMS ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE PLATFORM, THE SFDC SERVICE, AND/OR THE RESELLER APPLICATION, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.
13. **No Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SFDC HAVE ANY LIABILITY TO YOU OR ANY USER FOR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR DAMAGES BASED ON LOST PROFITS, COST OF PROCUREMENT OF REPLACEMENT GOODS OR SERVICES, LOST BUSINESS, LOSS OF USE, LOSS OF OR CORRUPTION OF DATA, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. **Further Contact.** SFDC may contact You regarding new Platform and SFDC Service features and offerings.
15. **Third Party Beneficiary.** SFDC shall be a third party beneficiary to the agreement between You and Reseller associated with Your purchase of the Reseller Application solely as it relates to this SFDC Service Agreement.

Annex C: Support SLA

Introduction

XCD understands the importance that our software plays in securing our customers' data, protecting confidentiality, and enabling you to maximise efficiency and productivity within your company. We view our Support Services as a critical component of our customers' success and are committed to providing a reliable, high-performance service. This schedule describes our Support Services Procedures and Service Level Agreements. It covers:

- Getting Help: Reporting a case
- Case categories
- Case Management: Severity, Service Levels, Resolution and Escalation
- Eligibility

Getting Help: Reporting a Case

Email contact	support@peoplexcd.com
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Case reporting should be from your designated Administrators logging a case by email or through the XCD Client Portal. Before logging a case, please make sure you have the following information:

- Organisation information, including designate name and contact details
- Screen-prints, URLs or reports or both where the issue occurs, including any supporting information, such as error messages
- Steps taken to replicate the scenario; and any actions you have already attempted

We will acknowledge your case by email. The acknowledgement will include a case reference number and the assigned priority. You should use the reference number in all future communications regarding this case.

Case Categories

- **Incidents** – unplanned interruptions (or degradations) to the service, whereby the system is not functioning as designed. Incidents are covered under SLA.
- **Service requests** – a request for assistance (such as training, new fields, reports, dashboards, workflow, approvals, communication templates, data uploads etc) whereby the system is functioning correctly but XCD's assistance is required. These requests are covered under the XCD Premier Support plan.

Case Management: Severity, Service Levels, Resolution and Escalation

When we receive an inbound case, our Service Desk will create the case, assess the appropriate severity level, case category, perform 'triage' and will then either resolve the case or escalate to a Service Desk engineer.

Severity Levels

Emergency	An incident which has rendered your production application inoperable, severely impacting business operations
Critical	An incident which significantly impacts your business operations, or there is a data security risk, but the site or application continues to operate.
Normal	Any other incident

At any stage of the case lifecycle, the Service Desk may ask you for additional information to help them determine the severity level and to resolve the case. The team may ask you to participate in a web conference meeting to replicate the incident, or to send through screen-prints of any of the areas where the problem is occurring, or to investigate possible courses of corrective action. Our team will agree with you whether they need dial-in access.

Service Response: Normal Business Hours

A Service Desk engineer will work with you to resolve your case (by way of fix, workaround or patch) to the following target SLAs:

Severity Level	Target Case Resolution
Emergency	24 hours
Critical	48 hours
Normal	5 business days – workaround (if required and available) Other – considered as Enhancement Request for future Releases

Resolution

Either you, the customer, or XCD Support can resolve a case. This normally occurs when:

- You are given an answer that resolves the case
- A maintenance build is provided
- It is determined that the issue is not application related
- A workaround is provided; or
- The issue is deemed a feature enhancement request.

Escalating Support Issues

Our support team is committed to responsive support and rapid resolution of your case. However, if you feel that we are not successfully resolving your case to plan, or that we have failed to meet your expectations, please ask to speak with one of our senior operations managers who will be happy to discuss your concern.

We aim to provide you with the best service possible. Please help by telling us if we have not performed to your expectations so that we can take the appropriate corrective action.

Eligibility

XCD customers are covered by this SLA, with the following exceptions:

When a customer account balance is overdue by 30 days or more

Circumstances beyond XCD's reasonable control including, without limitation, acts of any governmental body, war, insurrection, sabotage, terrorism, embargo, fire, flood, strike or other labour disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, or failure of any customer premise network equipment

Scheduled maintenance (this will normally be advised in advance and where possible will be outside normal business hours)

Domain name service (DNS) issues related to third party DNS providers

Client acts or omissions including, without limitation: incorrectly setting up access and permission level for employees, incorrect data entry, failure to manage/archive audit and other data; negligence, wilful misconduct; use of XCD services in breach of these Terms and Conditions of Use, by Customer, its employees, agents or others authorized by Customer.

Note that:

Response times assume that the incident resolution is due on a normal working day when the Service Desk is open for business (a Business Day). If that day is not a Business Day, then target case resolution is postponed until the same time on the next Business Day. Time shown refers to the elapsed time from the time contact is made. If insufficient information has been given to XCD for analysis of the incident, then an appropriate amount of time will be deducted from recorded resolution timings. This deduction of time will take account of the period whilst the information was lacking and the extent to which it impacted on XCD's ability to analyse and resolve the problem.

Case resolution will be marked as completed when the Service Desk communicate to the customer that the incident is resolved. However, the case will not be closed until the customer has agreed that the patch, temporary fix or workaround has temporarily or permanently corrected the reported incident to their satisfaction. Elapsed time for testing and verification customer to confirm resolution is excluded from the measurement of elapsed time to provide the patch, temporary fix or workaround.

Resolution can be a fix or a workaround such that the user can continue using the product

Where a problem has arisen because the Company has promoted a change to the Production Environment without a reasonable level of testing, XCD will resolve the incident to the above service levels but such work will not be regarded as Support Services but rather as Professional Services, for which a charge may be levied.

This SLA applies only to services provided by XCD

XCD, in its sole discretion, may amend or revise this SLA at any time. Such amendments or revisions will be considered effective when an updated SLA is posted on the XCD website.

Annex D: XCD Data Processing Agreement

1. Third Party Data Processor Obligations

1.1. **Definitions.** The following terms shall have the meanings set out below:

- 1.1.1 **"Applicable Laws"** means as applicable and binding on the Client, XCD and/or the Services:
 - 1.1.1.1 To the extent the UK Data Protection Laws applies, the law of the United Kingdom or of a part of the United Kingdom.
 - 1.1.1.2 To the extent European Data Protection Laws applies, the law of the European Union or any member state of the European Union to which XCD is subject.
- 1.1.2 **"Data Protection Laws"** means the European Data Protection Laws and/or UK Data Protection Laws as applicable and, to the extent applicable, the data protection or privacy laws of any other country, together with any guidance issued by a Supervisory Authority. In the event of conflict or inconsistency between European Data Protection Laws and UK Data Protection Laws, UK Data Protection Laws shall prevail;
- 1.1.3 **"Data Protection Losses"** means all liabilities, including all:
 - 1.1.3.1 costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage); and
 - 1.1.3.2 to the extent permitted by Applicable Law:
 - 1.1.3.3 administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority;
 - 1.1.3.4 compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and
 - 1.1.3.5 the reasonable costs of compliance with investigations by a Supervisory Authority;
- 1.1.4 **"Client"** means the Client including any subsidiary, holding or associated or affiliated company of the Client;
- 1.1.5 **"Personal Data"** means any Personal Data Processed by XCD on behalf of the Client pursuant to or in connection with this Agreement;
- 1.1.6 **"Contracted Processor"** means XCD or a Sub processor;
- 1.1.7 **"EEA"** means the European Economic Area;
- 1.1.8 **"European Data Protection Laws"** means the EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council ("GDPR"); and laws implementing or supplementing the GDPR;
- 1.1.9 **"Restricted Transfer"** means an onward transfer of Personal Data from a Contracted Processor to a Sub-processor where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws) in the absence of the protection for the transferred personal data provided by the Standard Contractual Clauses as set out within this Annex or such other protection as is required by Data Protection Laws;
- 1.1.10 **"Services"** means the services and other activities to be supplied to or carried out by or on behalf of XCD for the Client pursuant to this Agreement;
- 1.1.11 **"Standard Contractual Clauses"** means either standard data protection clauses (a) adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or (b) adopted by the UK Information Commissioner from time to time (where the UK GDPR applies to the transfer);
- 1.1.12 **"Sub processor"** means the following Sub-processors which are used by XCD to provide the Services to the Client:
 - 1.1.12.1 XCD HR Private Limited, a wholly owned subsidiary of XCD HR Limited, based in India.

- 1.1.12.2 Salesforce who provide the Platform Service comprising hosting platform, infrastructures and data centre in accordance with the Salesforce Platform Agreement as set out at Annex B to the XCD Terms & Conditions; and
- 1.1.12.3 Any other third party applications, API integrations, development partners or implementation partners requested and authorised by the Client;
- 1.1.13 **"Supervisory Authority"** means as defined in the Data Protection Laws including any similar regulatory authority responsible for the enforcement of Data Protection Laws, including the Information Commissioner's Office in the United Kingdom ("ICO");.
- 1.1.14 **"UK Data Protection Laws"** means the GDPR as transposed into United Kingdom national law by operation of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 ("UK GDPR"), together with the Data Protection Act 2018, the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 and other data protection or privacy legislation in force from time to time in the United Kingdom; and
- 1.1.15 The terms, "Commission", **"Controller"**, **"Data Subject"**, **"Member State"**, **"Personal Data"**, **"Personal Data Breach"**, **"Processing"** and **"Supervisory Authority"** shall have the same meaning as in the Data Protection Laws.

1.2 Data Processor and Data Controller

- 1.2.1 The parties agree that, for the Personal Data, the Client shall be the Data Controller and XCD shall be the Data Processor.
- 1.2.2 XCD shall comply with:
 - 1.2.2.1 the obligations of Data Processors under Data Protection Laws in respect of the performance of its obligations under this Annex; and
 - 1.2.2.2 the terms of this Annex.
- 1.2.3 The Client shall comply with:
 - 1.2.3.1 all Data Protection Laws in connection with the processing of Personal Data, the Services and the exercise and performance of its respective rights and obligations under this Agreement, including maintaining all relevant regulatory registrations and notifications as required under Data Protection Laws and complying with the obligations of Controllers under Data Protection Laws in respect of its collection, processing and transfer of Personal Data; and
 - 1.2.3.2 the terms of condition 11 of this Agreement and this Annex.
- 1.2.4 The Client warrants, represents and undertakes that all data sourced by the Client for use in connection with the Services, shall comply in all respects, including in terms of its collection, storage and processing (which shall include the Client providing all of the required fair processing information to, and obtaining all necessary consents from, Data Subjects), with Data Protection Laws.

1.3 Instructions and Details of Processing

- 1.3.1 The Client:
 - 1.3.1.1 as Controller is responsible for determining the Personal Data to be held by the Subscription Services and maintaining the data in accordance with Data Protection Laws;
 - 1.3.1.2 hereby instructs XCD (and authorises XCD to instruct each Sub processor) to:
 - (a) process Personal Data for the purposes specified at the Processing Annex or in other documented instructions; and
 - (b) only transfer Personal Data within the United Kingdom, EU or to its authorised Sub-processor in India (being XCD HR Private Limited), as reasonably necessary for the provision of the Services;
 - 1.3.1.3 warrants, represents and undertakes that all instructions given by it to XCD in respect of Personal Data shall at all times be in accordance with Data Protection Laws.
- 1.3.2 Insofar as XCD processes Personal Data on behalf of the Client, XCD:
 - 1.3.2.1 shall not Process Personal Data other than in accordance with the terms of the Contract and this Annex D and on the Client's instructions as set out in this clause 1.3 and the Processing Annex

(the "Processing Instructions") unless Processing is required by Applicable Laws, in which case XCD shall to the extent permitted by Applicable Laws inform the client of that legal requirement before the relevant Processing of that Personal Data (unless Applicable Law prohibits such information on important grounds of public interest).

1.3.2.2 shall promptly inform the Client if XCD becomes aware of a Processing Instruction that, in XCD's opinion, infringes Data Protection Laws, provided that to the maximum extent permitted by mandatory law, XCD shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities (including any Data Protection Losses) arising from or in connection with any processing in accordance with the Client's Processing Instructions following XCD's receipt of those instructions.

1.3.3 The section "Details of Processing Personal Data" of the Processing Annex sets out certain information regarding XCD's responsibilities as a Processor of Personal Data as required by article 28(3) of the GDPR (and, possibly, equivalent requirements of other Data Protection Laws). The Processing Annex may be updated from time to time if agreed by both parties.

1.4 Access to Personal Data

1.4.1 XCD shall take reasonable steps to ensure the reliability of any employee, agent or contractor who may have access to the Client's Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Personal Data, as strictly necessary for the purposes of this Agreement, and to comply with Applicable Laws, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

1.5 Security and Audit

1.5.1 Each party shall comply with the requirements regarding the security of Processing data as set out in Data Protection Laws and take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage, including in the case of XCD, the technical and organisational measures set out in the Technical and Organisational Measure Annex.

1.5.2 The Client, as Controller, is responsible for determining who has access to Personal Data in the Subscription Services, as well as the purpose and duration of this access. XCD, as Processor, will enable access control down to individual field level security through a combination of security profiles and permission sets. Any changes to profiles or permission sets must be authorised by the Data Controller.

1.5.3 Salesforce, as Sub-processor, will maintain the security, privacy and confidentiality of Client data in dedicated data centres within the United Kingdom (or as otherwise requested by the Client) in accordance with ISO27001 standards. An independent audit report will be conducted annually to verify compliance based on Service Organization Controls (SOC1) standards. This report can be made available to Clients upon request.

1.5.4 Subject to paragraph 1.5.5, XCD shall maintain records to demonstrate compliance with this Annex D and make available (and use all reasonable endeavours to procure each Sub-processor makes available to the Client on request such information reasonably necessary to demonstrate compliance with this Annex D.

1.5.5 The Client acknowledges that any audit and inspection rights in respect of any relevant records, processes and systems of a Sub-processor is subject and limited to such rights, obligations or restrictions or other terms XCD is subject to under its agreements with the relevant Sub-Processors.

1.6 Sub processing

1.6.1 The Client authorises XCD to use the Sub-processors in accordance with this paragraph 1.6 and any restrictions in this Annex.

1.6.2 With respect to each Sub processor, XCD certifies that:

1.6.2.1 It has carried out adequate due diligence to ensure that the Sub processor is capable of providing the level of protection for Personal Data required by this Annex;

1.6.2.2 It has or will put in place, and will maintain, a written contract including terms which meet the requirements of the Data Protection Laws and are consistent with the obligations imposed on XCD in this Annex; and

1.6.2.3 if that arrangement involves a Restricted Transfer, XCD will ensure that the Standard Contractual Clauses are at all relevant times incorporated into the agreement between XCD and the relevant Sub processor or otherwise ensure that such transfers are effected in accordance with applicable Data Protection Laws. For these purposes, the Client shall promptly comply with any reasonable request of XCD, including any request to enter into Standard Contractual Clauses and undertake appropriate transfer risk assessments in relation to such Restricted Transfers.

- 1.6.3 XCD shall use commercially reasonable efforts to ensure that each Sub-processor performs the obligations under this Section, as they apply to Processing of Personal Data carried out by that Sub processor, as if it were in place of XCD. XCD shall remain responsible for the acts and omission of any Sub processor, when acting as a processor, as if they were the acts and omissions of XCD.
- 1.6.4 Other than the pre-approved list of Sub processors as specified in paragraph 1.1.12, XCD shall not engage any other sub-processor for carrying out any processing activities in respect of the Personal Data without the Client's written authorisation of that specific sub-processor (such authorisation not to be unreasonably withheld, conditioned or delayed).
- 1.6.5 To the extent a Sub-processor engages third party sub processors and/or affiliates to Process Personal Data, the Sub-processor is responsible that such entities shall be subject to the same level of data protection and security as the Sub-Processor provides under the terms of its respective processing agreement with XCD or its affiliates. The Sub-processor is responsible for the performance of their affiliates' and third party sub processors' obligations in compliance with its respective processing agreement with XCD or its affiliates and applicable Data Protection Laws.

1.7 Data Subject Rights

- 1.7.1 The Client is responsible for determining their obligations to requests to exercise Data Subject rights under the Data Protection Laws. XCD shall assist the Client by implementing appropriate technical and organisational measures, insofar as this is reasonably possible, for the fulfilment of the Client's obligations to respond to such requests.
- 1.7.2 XCD shall:
 - 1.7.2.1 promptly notify the Client if any Contracted Processor receives a request from a Data Subject under Data Protection Laws in respect of Personal Data; and
 - 1.7.2.2 ensure that the Contracted Processor does not respond to that request except on the documented instructions of the Client or as required by Applicable Laws to which the Contracted Processor is subject, in which case XCD shall to the extent permitted by Applicable Laws inform the Client of that legal requirement before the Contracted Processor responds to the request.

1.8 Personal Data Breach

- 1.8.1 XCD shall notify the Client without undue delay upon XCD or any Sub processor becoming aware of a Personal Data Breach affecting Personal Data, providing the Client with sufficient information to allow the Client to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.
- 1.8.2 XCD shall maintain policies and procedures to ensure that it responds to a Personal Data Breach in accordance with its obligations. Such notification shall as a minimum:
 - 1.8.2.1 describe the nature of the Personal Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned; and
 - 1.8.2.2 communicate the name and contact details of XCD's data protection officer/manager or other relevant contact from whom more information may be obtained.
- 1.8.3 XCD shall co-operate with the Client and take such reasonable commercial steps as are directed by the Client to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

1.9 Data Protection Impact Assessment and Prior Consultation

- 1.9.1 XCD shall provide reasonable assistance to the Client with any data protection impact assessments, and prior consultations with Supervisory Authorities or other competent data privacy authorities in relation to Processing of Personal Data, and taking into account the nature of the Processing and information available to, the Contracted Processors.

1.10 Restricted Transfer

- 1.10.1 To the extent a Restricted Transfer is authorised pursuant to the terms of this Annex or otherwise the Client consents to such Restricted Transfer, XCD shall ensure that all such transfers are effected in accordance with applicable Data Protection Laws. For these purposes, the Client shall promptly comply with any reasonable request of XCD, including any request to enter into Standard Contractual Clauses or conduct any transfer impact assessment.

1.11 Deletion of Personal Data

- 1.11.1 XCD, and its Sub-processors, shall permanently erase all Client data at the end of the contract period. Deletion of Personal Data during the contract period shall be in accordance with the services provided at the Processing Annex.

- 1.11.2 The Client may request a full or partial copy of Personal Data prior to deletion. This will be provided by XCD as a single data export in csv format (structured reports will be chargeable). XCD shall comply with any such written request within thirty (30) days before the end of the contract period.
- 1.11.3 XCD shall provide written certification to the Client that it has complied with this section 1.11.

This Annex sets out the responsibilities of both the Client and XCD for the processing of Personal Data in accordance with Data Protection Laws.

PROCESSING ANNEX - DETAILS OF PROCESSING OF PERSONAL DATA

1. Details of data processing activities provided by XCD and its Sub-processors are set out below.
2. XCD shall comply with any further written instructions with respect to processing as requested by the Client.

IMPLEMENTATION PHASE

Description	Details
Subject matter of the processing	Upload Company and Employee information into the XCD HR & Payroll application.
Duration of the processing	The implementation phase will be agreed during the project planning and agreed by the Project Steering Committee.
Nature and purposes of the processing	The purpose is to update company and personal data provided by the Client. The Client, as Data Owner, will be responsible for quality and accuracy of data. XCD HR Ltd will act as Data Processor and will be responsible for the accuracy of the data upload and data validation. This work will be completed by XCD HR Private Limited (wholly owned subsidiary of XCD HR Limited located in India) acting as a Sub-Processor. XCD HR Limited has a Data Processing Agreement in place with XCD HR Private Limited. The Client hereby gives consent for the data upload to be conducted outside the United Kingdom/EU in accordance with paragraph 1.3.1 of Annex D.
Type of Personal Data	Personal data (name, address, date of birth, passport details, bank details) and Personal Sensitive Data (Ethnicity, Religion, Medical Certificates). The Client as Data Owner will determine exact data fields and documents to be uploaded and maintained in XCD who act as Data Processor.
Categories of Data Subject	Employees, contractors and consultants as determined by the Client.

Plan for return and destruction of the data once the processing is complete	All data files will be permanently erased within one month of data upload verification.
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LIVE AND SUPPORT PHASE

Description	Details
Subject matter of the processing	HR & Payroll processing within the XCD application. All activities are automated through a combination of code, workflow, approvals, templates, reports and notifications. All processing is completed within the single application and data is not transferred to any other applications for processing (however data can be integrated with other applications if required).
Duration of the processing	Duration of the contract. Processing is a continuous activity as part of the system automation and processes.
Nature and purposes of the processing	HR & Payroll processing within the XCD application to include Payroll processing; approval processes for leave, expenses and timesheets; salary review and performance review process. The XCD HR & Payroll solution is built on the Salesforce platform. Salesforce acts as a Sub-Processor in accordance with the Data Processing Agreement between XCD HR Limited and Salesforce. The Payroll Helpdesk provides payroll support (as a Data Processor). The HR Helpdesk provides HR support (as a Sub-processor).
Type of Personal Data	Personal data for example (name, address, date of birth, passport details, bank details) and Personal Sensitive Data (Ethnicity, Religion, Medical Certificates). The Client as Data owner will determine exact data fields and documents to be uploaded and maintained in XCD.
Categories of Data Subject	Employees, contractors and consultants as determined by the Client.
Plan for return and destruction of the data once the processing is complete	Data will be held in XCD (in the Salesforce Cloud) for the duration of the contract term. The Client as Data Owner will be responsible for keeping the data accurate and in accordance with their data retention policy. At the end of the contract term all data and documents can be exported. The database will be

	permanently erased 30 days after expiry of the contract unless otherwise agreed with the Client.
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TECHNICAL AND ORGANISATIONAL MEASURES ANNEX

The XCD solution is built on the Salesforce platform and hosted in Salesforce data centres (in the EU, United Kingdom or as otherwise requested by the Client). Salesforce act as a Sub processor to this agreement and their services are certified as compliant with some of the most rigorous, industry-accepted security, privacy, and reliability standards. Salesforce is certified and audited to standards as a service provider with the ISO/IEC 27001:2005 standard (including ISO 27001), SAS 70 Type II (now SSAE No. 16), SysTrust, and the EU-U.S. DPF, UK Extension to the EU-U.S. DPF, and Swiss-U.S. DPF .

Salesforce technical security measures include:

- Network security. Salesforce.com invests heavily in network defence. We use the same world-class security as global banks do for their banking. For example, we encrypt all data transmissions that involve our systems using SSL 3.0/TLS 1.0 global step-up certificates from VeriSign to ensure that prying eyes cannot use data that might be intercepted. We employ perimeter firewalls and edge routers to block unused transmission protocols, and use internal firewalls to segregate traffic between the application and database tiers.
- Datacentre security. The physical security of each salesforce.com facility is comparable to the best civilian data centres in the world. The exterior perimeter of each anonymous building is bullet resistant, has concrete vehicle barriers, closed-circuit television coverage, alarm systems, and manned guard stations, all of which help defend against non-entrance attack points. Inside each building, multiple biometric scans and guards limit access through interior doors and cages at all times.
- Malicious threats and intrusion. Salesforce.com uses a layered approach to protect your data from simple storage device errors, catastrophic failures, and everything in between. To support basic database recovery scenarios, we back up all of your data on a rotating schedule of incremental and full backups that let us restore service more efficiently should the need arise. Our disaster recovery mechanisms use real-time replication to disk at each data centre, and near real-time data replication between the production data centre and the disaster recovery centre.
- Data access. You can use several Force.com features to control the objects, fields, and specific data records to which your users have access. Here's a preview of how it's done.
 - a. Create profiles and permission sets create profiles and permission sets to control the application, based on the different functions each type needs to access. Create a base level profile for each type of user so that each profile has only the permissions required for that type of user to perform these functions. Then create permission sets to handle exceptions so that each profile has only the permissions required for
 - b. Assign users assign users exceptions so that each profile has only the permission that they can access
 - c. Set sharing models set sharing models on so the organization-wide default record sharing settings to determine whether the records that each user owns are public or private.
 - d. Share private records share profiles, groups, record sharing rules, and other means to share private records with other users.

Data security and privacy has been built into the technical design of the XCD solution which enables Clients to secure, maintain and process Personal Data in line with Data Protection Legislation. XCD as Data Processor have put in place a framework of policies, processes and procedures which are regularly reviewed and audited to ensure that we achieve the highest standards for data protection in line with Data Protection Legislation. This includes:

- Employees: background checks are conducted on all employees and they:
 - receive information and training on security privacy and training
 - sign a Confidentiality Agreement and the Company Code of Conduct
 - sign the Acceptable Usage Policy
 - have controlled access to Client Personal Data based on their role and responsibilities
 - are issued with a company laptop with encryption, password protection and anti-virus protection
- Buildings: physical access to office buildings is maintained through a combination of security guards and key fob access
- Data uploads: Client data upload files are uploaded by the Client into a secure folder (Salesforce Library) and the Client controls which individuals have access to these files. This access can be turned off by the Client once the data upload has been completed, or earlier if required.
- Security reviews and audit: process of continuous improvement to ensure the security and protection of Client Personal Data

Any additional technical and organisational measures shall be at the Client's cost and expense.