

DATED



(1) PRIME DOCUMENT LIMITED

(2) XX

SUPPLY OF SERVICES AGREEMENT

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THIS AGREEMENT is dated

2018 and made between:

- (1) **PRIME DOCUMENT LIMITED** a company registered in England and Wales with company number 03732738, whose registered office is situated at Unit 3, Park Seventeen, Moss Lane, Whitefield, Manchester M45 8FJ ("**Supplier**").
- (2) **XX** ("**Customer**").

IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this agreement:

"Customer Data" the Customer's own customer data including names of the Customer's customers, their addresses, prices applicable to those customers, their order details and history and details of named customer accounts and where applicable includes Personal Data.

"Customer's Manager" means **XX**, or such other person appointed by the Customer;

"Data Protection Legislation" means all applicable privacy and data protection laws including the General Data Protection Regulation ((EU) 2016/679) and any applicable national implementing laws, regulations and secondary legislation in England and Wales relating to the processing of personal data and the privacy of electronic communications, as amended, replaced or updated from time to time, including the Privacy and Electronic Communications Directive (2002/58/EC) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426);

"Deliverables" means all Documents, products and materials developed by the Supplier or its licensors, agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data and reports (including drafts);

"Document" has the meaning and includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;

"Extended Term" has the meaning ascribed to it in clause 2(c);

"In-put Material" means all Documents, information, data and materials provided by the Customer relating to the Services;

"Initial Term" has the meaning ascribed to it in clause 2(c);

"Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"Pre-existing Materials" means all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of this agreement, including computer programs, data and reports;

"Services" means the services to be provided under this agreement as set out in Schedule 1, together with any other services which the Supplier provides or agrees to provide to the Customer;

"Supplier's Manager" means **XX**, or such other person appointed by the Supplier;

"Term" means the Initial Term and the Extended Term (if any);

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

1.2 Construction and interpretation

Unless a contrary indication appears, a reference in this agreement to:

- (a) Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- (b) A **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (c) The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules.
- (d) Words in the singular shall include the plural and vice versa.
- (e) A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- (f) A reference to **"writing"** or **"written"** includes faxes but not e-mail.
- (g) Where the words **"include(s)"**, **"including"** or **"in particular"** are used in this agreement, they are deemed to have the words **"without limitation"** following them. Where the context permits, the words **"other"** and **"otherwise"** are illustrative and shall not limit the sense of the words preceding them.
- (h) Any obligation in this agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- (i) References to clauses and schedules are to the clauses and schedules of this agreement.

2. COMMENCEMENT AND DURATION

- (a) The Supplier shall provide the Services to the Customer on the terms and conditions of this agreement.
- (b) The Supplier shall provide the Services to the Customer from **XX**.
- (c) The Services supplied under this agreement shall continue to be supplied for a period of 3 years (**"Initial Term"**) and, after that, shall continue to be supplied for successive 12 month periods (each an "Extended Term") unless either party gives written notice to the other party not later than 3 months before the end of the Initial Term or the relevant Extended Term, to terminate this agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.

3. SUPPLIER'S OBLIGATIONS

- (a) The Supplier shall use reasonable endeavours to provide the Services with all reasonable care and skill, and to deliver the Deliverables to the Customer, in accordance with Schedule 1.
- (b) This agreement shall be performed by the Supplier in compliance with the service levels set out in Schedule 3.
- (c) The Supplier shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises and that have been communicated to it under clause 4(a)(iv), provided that it shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.

4. CUSTOMER'S OBLIGATIONS

- (a) The Customer shall:
- (i) co-operate with the Supplier in all matters relating to the Services;
 - (ii) provide, in a timely manner, such In-put Material and other information as the Supplier may require, or which the Supplier agrees to hold, and ensure that it is accurate in all material respects and, in particular, to ensure that all Documents and data supplied to the Supplier are prepared by competent trained employees, or by individuals under the supervision of competent trained employees, in a proper manner, and in accordance with the Supplier's instructions from time to time;
 - (iii) appoint the Customer's Manager who will act as the Customer's contact person and who will be responsible for providing any Documents, Customer's Equipment and In-put Material, which may be required by the Supplier in relation to the Services;
 - (iv) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;
 - (v) be responsible for all communications links required for the provision of the Services, as may be notified to the Customer from time to time;
 - (vi) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services and the use of In-put Material;
 - (vii) ensure during the initial set-up stages that any Deliverables, including sample prints, copy and other works produced by the Supplier, are adequate for the Customer's needs.
- (b) The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.
- (c) The Customer shall not, without the prior written consent of the Supplier, at any time from the date of this agreement to the expiry of 6 months after the last date of supply of the Services or termination of this agreement, whichever is earlier, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.
- (d) Any consent given by the Supplier in accordance with clause 4(c) shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.
- (e) In the event the Supplier is unable to provide the Services on behalf of the Customer for a period of 2 weeks or more, the Customer may obtain substitute services from another supplier until such time as the Supplier is able to recommence the Services in accordance with this agreement and the Customer is able to exit its contract with the substitute supplier without liability. The Customer shall have no liability to the Supplier during this period.

5. **INCOMPLETE, INCORRECT OR INACCURATE INFORMATION OR INSTRUCTIONS**

If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees (including by the provision of any incorrect or inadequate data, information or instructions), the Supplier:

- (a) shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay; and
- (b) may make an additional reasonable charge (by reference to its charge rates in Schedule 2) in accordance with clause 6(b) and clause 6(c) below to the extent that the Supplier can demonstrate the necessity for the additional charges proposed.

6. CHANGE CONTROL

- (a) The Customer's Manager and the Supplier's Manager shall meet at least once every 6 months to discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
- (b) If either party requests a change to the scope or execution of the Services, or if the Supplier wishes to make an additional charge pursuant to clause 5 above, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
 - (i) the likely time required to implement the change;
 - (ii) any necessary variations to the Supplier's charges arising from the change; and
 - (iii) any other impact of the change on this agreement.
- (c) If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services and any other relevant terms of this agreement to take account of the change and this agreement has been varied in accordance with clause 16.
- (d) Notwithstanding clause 6(c), the Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. The Supplier may, from time to time change the Services, provided that such changes do not materially affect the nature or quality of the Services and, where practicable, it will give the Customer at least three months' notice of any change.

7. CHARGES AND PAYMENT

- (a) In consideration of the provision of the Services by the Supplier, the Customer shall pay the charges as set out in Schedule 2.
- (b) All charges quoted to the Customer shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate.
- (c) The Supplier shall invoice the Customer on a weekly basis.
- (d) Subject to clause 7(e), the parties agree that the Supplier may review and increase the charges set out in Schedule 2, provided that:
 - (i) such charges cannot be increased more than once in any 12 month period and for the avoidance of doubt no increase shall be made during the Initial Period; and
 - (ii) such increase shall not exceed a percentage equal to the percentage increase in the Retail Prices Index published by the Office for National Statistics (or its successor from time to time) for the period from the Commencement Date (in the case of the first increase) or the date on which the immediately preceding increase came into effect pursuant to this clause (in the case of the second or any subsequent increase) up to the date of this notice.
- (e) Notwithstanding clauses 7(d)(i) and 7(d)(ii), the Supplier may:
 - (i) increase the postal costs it charges to the Customer in line with any increase levied by Royal Mail (or its successor from time to time) or any down stream access provider for the provision of postal service; and

- (ii) increase the cost of stationery items it charges to the Customer in line with any increases in paper pulp prices.
- (f) The Customer shall pay each invoice (subject to clause 7(h) below) submitted to it by the Supplier, in full and in cleared funds, within 30 days of receipt by cheque or to a bank account nominated in writing by the Supplier.
- (g) Without prejudice to any other right or remedy that it may have, if the Customer fails to pay an invoice to the Supplier on the due date (subject to clause 7(h) below), the Supplier may:
 - (i) charge interest on such sum from the due date for payment at the annual rate of 4% above the base rate from time to time of Yorkshire Bank, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
 - (ii) suspend all Services until payment has been made in full.
- (h) Disputes Payments
 - (i) The Customer may, in good faith, dispute and withhold any amount specified in an invoice within 10 Business Days of receipt of such invoice. Any undisputed amounts shall be paid on or before the due date. Neither a failure to dispute any amount specified in an invoice within such period nor settlement of an invoice shall prejudice a party's rights to subsequently bring a claim in respect of that invoice.
 - (ii) The parties shall seek to settle the disputed amount as soon as reasonably possible in accordance with clause 25 (provided that clause 25(c) shall not apply in such circumstances) and any adjustment payment required to be made in accordance with the resolution of a dispute shall be made within five Business Days of the date of that resolution. Any amount subsequently determined to have been wrongly withheld shall bear interest under clause 7(g)(i) from (and including) the date when the amount should have been paid if the dispute had not occurred until (but excluding) the date of actual payment in full of such amount and such interest.
 - (iii) A dispute as to any amount payable under this agreement shall not relieve the payer of its obligations to make any other payment required by this Agreement when due and payable.
- (i) All sums payable to the Supplier under this agreement shall become due immediately on its termination, despite any other provision. This clause 7(i) is without prejudice to any right to claim for interest under the law, or any such right under this agreement.

Each party may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the other party against any amounts payable by it to the other party.

8. **INTELLECTUAL PROPERTY RIGHTS**

- (a) As between the Customer and the Supplier and subject always to 8(c) below, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Supplier. Subject to clause 8(b), the Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services. If this agreement is terminated, this licence will automatically terminate.
- (b) The Customer acknowledges that, where the Supplier does not own any of the Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

- (c) All Intellectual Property Rights in the Customer's trademarks/logos/trading names are and shall remain in the ownership of the Customer. Nothing in this agreement shall be deemed to transfer the ownership of any Intellectual Property Rights from one party to another.

9. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY

- (a) The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its licensors, employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain.
- (b) The Customer may disclose such information:
 - (i) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under this agreement; and
 - (ii) as may be required by law, court order or any governmental or regulatory authority.
- (c) The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this clause 9.
- (d) The Customer shall not use any such information for any purpose other than to perform its obligations under this agreement.
- (e) The Customer agrees that the Supplier may use the Customer's name and trade marks in connection with the promotion of the Supplier's business only with the prior written approval of the Customer.
- (f) All materials, equipment and tools supplied by the Supplier to the Customer (including Pre-existing Materials and the Supplier's Equipment) shall, at all times, be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.
- (g) The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Customer, its licensors, employees, agents, consultants or subcontractors and any other confidential information concerning the Customer's business or its products which the Supplier may obtain including without limitation all Customer Data and all commercial knowledge gained from such Customer Data.
- (h) The Supplier may disclose such information:
 - (i) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Supplier's obligations under this agreement; and
 - (ii) as may be required by law, court order or any governmental or regulatory authority.
- (i) The Supplier shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this clause.
- (j) The Supplier shall not use any such information for any purpose other than to perform its obligations under this agreement.
- (k) All materials, equipment and tools supplied by the Customer to the Supplier shall, at all times, be and remain the exclusive property of the Customer, but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition

by the Supplier until returned to the Customer, and shall not be disposed of or used other than in accordance with the Customer's written instructions or authorisation.

10. **STORAGE AND RESPONSIBILITY FOR IN-PUT MATERIAL AND TUPE**

- (a) The Supplier does not accept any liability for loss or damage to any In-put Material in its possession and such In-put Material shall at all times remain the sole risk of the Customer, who shall be responsible for insuring such In-put Material to such level as it deems appropriate.
- (b) Both parties acknowledge that the Services are primarily an automated service and consequently both parties do not believe that the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply to the Services, either on the Commencement Date or on any termination.

11. **INDEMNITY**

- (a) The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the provision of the Services.
- (b) This indemnity shall not cover the Supplier to the extent that a claim under it results from the Supplier's negligence or wilful misconduct.
- (c) If any third party makes a claim, or notifies an intention to make a claim, against the Supplier which the Supplier is actually aware may give rise to a liability under this indemnity (a **Claim**), the Supplier shall:
 - (i) (to the extent possible without breaching obligations of confidentiality owed by the Supplier to third parties) as soon as reasonably practicable, give written notice of the Claim to the Customer, specifying the nature of the Claim in reasonable detail (based on information available to the Supplier at the applicable time);
 - (ii) not make any admission of liability, agreement or compromise in relation to the Claim without prior consultation with the Customer and provided always that the Supplier may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Customer) if the Supplier reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;
 - (iii) (to the extent possible without breaching obligations of confidentiality owed by the Supplier to third parties) keep the Customer reasonably informed as to the progress of the Claim and provide copies of any material correspondence relating to the Claim.

12. **LIMITATION OF LIABILITY**

- (a) This clause 12 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, licensors, consultants and subcontractors) to the Customer in respect of:
 - (i) any breach of this agreement however arising; and
 - (ii) any use made by the Customer of the Services and the Deliverables or any part of them.
- (b) Except as expressly and specifically provided in this agreement:

- (i) the Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
 - (ii) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement.
- (c) Nothing in this agreement limits or excludes the liability of the Supplier:
 - (i) for death or personal injury resulting from negligence; or
 - (ii) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier; or
 - (iii) for any liability incurred by the Customer as a result of any breach by the Supplier of the clause as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.
- (d) Subject to clauses 12(b) and 12(c):
 - (i) The Supplier shall not under any circumstances whatsoever be liable for:
 - (A) loss of profits; or
 - (B) loss of business; or
 - (C) depletion of goodwill and/or similar losses; or
 - (D) loss of anticipated savings; or
 - (E) loss of goods; or
 - (F) loss of contract; or
 - (G) loss of use; or
 - (H) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
 - (ii) the Supplier shall not be liable to the Customer for loss arising directly as a result of the Customer's breach of its obligations under this agreement; or
 - (iii) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this agreement shall in all circumstances be limited to £5,000,000.
- (e) To the extent the Customer has any liability to the Supplier under this Agreement the provisions of clause 12(d)(1) shall apply to exclude such losses from any liability of the Customer to the Supplier.
- (f) Nothing in this clause shall restrict or limit either party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this agreement.

13. **DATA PROTECTION**

- (a) Terms and expressions defined in the Data Protection Legislation shall have the same meaning when used in this Clause 13.
- (b) The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency.
- (c) The Customer and the Supplier acknowledge that for the purposes of the Data Protection Legislation, the Customer is the "Controller" and the Supplier is the

"Processor" of any Personal Data comprised within the Customer Data and processed by the Supplier for purposes in connection with the Services and/or this Agreement ("**Relevant Personal Data**").

- (d) Each party shall at all times comply with all relevant obligations imposed on it pursuant to the Data Protection Legislation in relation to the Relevant Personal Data.
- (e) Details of the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject are set out in Schedule 4.
- (f) Without prejudice to the generality of Clause 13(d), the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Data to the Supplier for the duration and purposes of this Agreement.
- (g) The Supplier shall process the Relevant Personal Data only to the extent, and in such a manner, as is necessary for the purposes specified in this Agreement and in accordance with the Customer's documented instructions from time to time and shall not process the Relevant Personal Data for any other purpose, unless the Supplier is required by applicable laws to otherwise process that Relevant Personal Data. Where the Supplier is relying on the laws of a member of the European Union or European Union Law as the basis for processing Relevant Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the applicable laws unless those applicable laws prohibit the Supplier from so notifying the Customer.
- (h) The Supplier shall provide all necessary assistance to enable the Customer to fulfil its obligations with regard to the Relevant Personal Data to respond to any requests from data subjects and/or any supervisor authority in accordance with the Data Protection Legislation, including:
 - (i) (at the Customer's cost) promptly complying with any written request by the Customer to amend, transfer, delete, suspend or restrict the processing of the Relevant Personal Data; and
 - (ii) in so far as possible, providing all assistance that the Customer reasonably requests to enable the Customer to deal with any request or complaint by any data subject or any order, notice, assessment, investigation or request by the Office of the Information Commissioner or any other supervisory authority relating to the processing of the Relevant Personal Data by the Supplier.
- (i) If the Supplier receives any complaint, notice or communication which relates directly or indirectly to the processing of the Relevant Personal Data, it shall promptly notify the Customer and it shall provide the Customer with full co-operation and assistance in relation to any such complaint, notice or communication.
- (j) The Supplier shall not transfer the Relevant Personal Data outside the European Economic Area without the prior written consent of the Customer.
- (k) The Supplier shall promptly inform the Customer without undue delay on becoming aware of a personal data breach in respect of the Relevant Personal Data.
- (l) The Supplier shall ensure that access to the Relevant Personal Data is limited to those persons who need access to the Relevant Personal Data to meet the Supplier's obligations under this Agreement.
- (m) The Supplier shall ensure that all persons authorised by the Supplier to process the Relevant Personal Data:
 - (i) are informed of the confidential nature of the Relevant Personal Data and are committed to obligations of confidentiality;
 - (ii) have undertaken training in the laws relating to handling personal data; and
 - (iii) are aware both of the Supplier's duties and their personal duties and obligations under such laws and this Agreement.

- (n) The Supplier shall notify the Customer within five working days of it receiving a request from a data subject for access to that person's Relevant Personal Data.
- (o) The Supplier shall ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of the Relevant Personal Data and against accidental loss or destruction of, or damage to, the Relevant Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to the Relevant Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- (p) The Supplier agrees to maintain records and information to demonstrate its compliance with this Clause 13 and allow for audits by the Customer or the Customer's designated auditor upon reasonable prior written notice and immediately inform the Customer if, in the opinion of the Supplier, an instruction of the Customer infringes the Data Protection Legislation.
- (q) Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 13. The Customer acknowledges that the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to use and process the Personal Data. Consequently, the Supplier will not be liable for any claim brought by any person arising from any action or omission by the Supplier, to the extent that such action or omission resulted directly from the Customer's instructions or the Customer's failure to comply with the Data Protection Legislation.
- (r) The Supplier may not authorise any third party or sub-contractor to process the Relevant Personal Data without the Customer's prior specific written consent.

14. **TERMINATION**

- (a) Without prejudice to any other rights or remedies which the parties may have, either party may terminate this agreement without liability and with immediate effect by giving written notice to the other party if:
 - (i) the other party commits a material breach of any of the material terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - (ii) the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - (iii) the other party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party; or
 - (iv) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party; or
 - (v) an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other party; or

- (vi) a floating charge holder over the assets of that other party has become entitled to appoint, or has appointed, an administrative receiver; or
 - (vii) a person becomes entitled to appoint a receiver over the assets of the other party, or a receiver is appointed over the assets of the other party; or
 - (viii) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
 - (ix) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14(a)(ii) to clause 14(a)(viii) (inclusive); or
 - (x) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
 - (xi) there is any issue (which is not caused by the Customer and does not fall within the meaning of Force Majeure Event under Clause 15 below), whereby the Services cannot be provided by the Supplier in accordance with the Schedules hereto for a period of 2 weeks.
- (b) Without prejudice to any other rights or remedies which the Supplier may have, the Supplier may terminate this agreement without liability to the Customer immediately on giving notice to the Customer if:
- (i) the Customer requires the Supplier, in the Supplier's reasonable opinion, to store or reproduce any material which is defamatory, illegal, obscene, immoral or in breach of any third party's Intellectual Property Rights; or
 - (ii) the Customer fails to pay any undisputed amount due under this agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment.
- (c) On termination of this agreement for any reason:
- (i) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
 - (ii) the Customer shall, within a reasonable time, return all of the Supplier's Equipment, Pre-existing Materials and the Documentation. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping;
 - (iii) the Supplier shall perform the Data Deletion Services (as described further in Schedule 1) with respect to all copies of the Customer Data within the possession of the Supplier and the Customer shall pay the Supplier the Data Deletion Services Fee (as set out in Schedule 2), except where the Customer has elected in writing to the Supplier no later than [7] days from the date of termination of this Agreement, for the Supplier to instead perform with the Data Migration Services (as described further in Schedule 1) with respect such Customer Data, in which event the Supplier shall instead perform the Data Migration Services and the Customer shall pay the Supplier the Data Migration Services Fee (as set out in Schedule 2). All fees due from the Customer under this sub-clause shall be payable within [x] days of the date of the Supplier's invoice;
 - (iv) the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination; and

- (v) clauses which expressly or by implication have effect after termination shall continue in full force and effect, including without limitation the following clauses: clause 8 (Intellectual property rights), clause 9 (Confidentiality and the Supplier's property), clause 11 (Indemnity), clause 12 (Limitation of liability), clause 13 (Data Protection), clause 14(c), clause 24 (Notices), clause 25 (Dispute resolution) and clause 26 (Governing law and jurisdiction).

15. **FORCE MAJEURE**

- (a) A party shall not be in breach of this agreement, nor liable for any failure or delay in performance of any obligations under this agreement (and, subject to clause 15(b), the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control ("**Force Majeure Event**"), including but not limited to any of the following:
 - (i) acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;
 - (ii) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
 - (iii) terrorist attack, civil war, civil commotion or riots;
 - (iv) nuclear, chemical or biological contamination or sonic boom;
 - (v) voluntary or mandatory compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law);
 - (vi) fire, explosion or accidental damage;
 - (vii) loss at sea;
 - (viii) adverse weather conditions;
 - (ix) collapse of building structures, failure of plant machinery, machinery, computers or vehicles;
 - (x) any labour dispute, including but not limited to strikes, industrial action or lockouts;
 - (xi) interruption or failure of utility service, including but not limited to electric power, gas, telecommunications or water.
- (b) If the Force Majeure Event prevails for a continuous period of more than three months, either party may terminate this agreement by giving 14 days' written notice to the other party. On the expiry of this notice period, this agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination.

16. **VARIATION**

Subject to clause 6, no variation of this agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

17. **WAIVER**

- (a) A waiver of any right or remedy under this agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.

- (b) No single or partial exercise of any right or remedy provided under this agreement or by law shall preclude or restrict the further exercise of any such right or remedy.

18. **CUMULATIVE REMEDIES**

Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

19. **SEVERANCE**

- (a) If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

20. **ENTIRE AGREEMENT**

- (a) This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of this agreement.
- (b) Each party acknowledges that, in entering into this agreement, it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in this agreement (whether made innocently or negligently) shall be for breach of contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

21. **ASSIGNMENT**

- (a) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this agreement.
- (b) Each party that has rights under this agreement is acting on its own behalf and not for the benefit of another person.
- (c) The Supplier shall not, without the prior written consent of the Customer, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this agreement.

22. **NO PARTNERSHIP OR AGENCY**

Nothing in this agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23. **RIGHTS OF THIRD PARTIES**

A person who is not a party to this agreement shall not have any rights under or in connection with it.

24. **NOTICES**

- (a) A notice given to a party under or in connection with this agreement:
 - (i) shall be in writing in English (or accompanied by a properly prepared translation into English);
 - (ii) shall be signed by or on behalf of the party giving it;
 - (iii) shall be sent for the attention of the person, at the address or fax number specified in this clause (or to such other address or person as that party may notify to the other, in accordance with the provisions of this clause); and
 - (iv) shall be:
 - (A) delivered personally; or
 - (B) sent by commercial courier; or
 - (C) sent by pre-paid first-class post or recorded delivery; or
 - (D) sent by airmail requiring signature on delivery.
- (b) The addresses for service of a notice are as follows:
 - (i) Supplier:
 - (A) address: Unit 3, Park Seventeen, Moss Lane, Whitefield, Manchester, M45 8FJ;
 - (B) for the attention of: Managing Director
 - (ii) Customer:
 - (A) address: XX
 - (B) for the attention of: XX; and
- (c) If a notice has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows:
 - (i) if delivered personally, at the time of delivery; or
 - (ii) if delivered by commercial courier, at the time of signature of the courier's receipt; or
 - (iii) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second day after posting; or
 - (iv) if sent by airmail, five days from the date of posting.
- (d) For the purposes of this clause:
 - (i) all times are to be read as local time in the place of deemed receipt; and
 - (ii) if deemed receipt under this clause is not within business hours (meaning 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt), the notice is deemed to have been received when business next starts in the place of receipt.
- (e) To prove delivery, it is sufficient to prove that:
 - (i) if sent by pre-paid first class post, the envelope containing the notice was properly addressed and posted.
- (f) The provisions of this clause 24 shall not apply to the service of any process in any legal action or proceedings.
- (g) A notice required to be given under or in connection with this agreement shall not be validly served if sent by e-mail.

25. **DISPUTE RESOLUTION**

- (a) If any dispute arises in connection with this agreement, the Supplier's Manager and the Customer's Manager shall, within 30 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- (b) If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing ("**ADR notice**") to the other party requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.
- (c) No party may commence any court proceedings in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

26. **GOVERNING LAW AND JURISDICTION**

- (a) This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.
- (b) The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of this agreement.

SCHEDULE 1
STATEMENT OF WORK

Schedules 1,2 and 3 provide details of set up, services, timelines and costs.

Service	Description
Technical Development	
Data-Processing	
Delivery Channel	
Despatch	
Additional	
Pre-Flight Testing	
Go-Live	
Data Deletion Services	
Data Migration Services	

SCHEDULE 2 CHARGES

Service	Application	Unit	£ per Day
Service	Application	Unit	£ per '000
Data amendment			
Data Deletion Services			
Data Migration Services			

Stock items	Application	Unit	£ per '000

Postage	Application	Unit	£ Each

Ongoing Technical Charges - if and when applicable				
Forms Amendments (text)				
Forms Amendments (design)				
Other Requirements			Price to be agreed in advance based on a daily rate of £	

SCHEDULE 3
SERVICE LEVEL AGREEMENT

Application	Frequency	Daily Page Volume	Dail Pack Volume

Activity	Scheduled	SLA	Measurement

SCHEDULE 4

DATA PROTECTION PARTICULARS

[Note: the following details should be completed before the contract is signed]

Scope: [INSERT]

Nature: [INSERT]

Purpose of processing: [INSERT]

Duration of the processing: [INSERT]

Types of personal data: [INSERT]

Categories of data subject: [INSERT]

EXECUTED by
for and on behalf of
PRIME DOCUMENT LIMITED

.....
Director

EXECUTED by
for and on behalf of **CUSTOMER**

.....
Director