Avella Terms and Conditions

Terms and Conditions for the Provisions of Services

These are the terms ("Agreement") on which Avella Ltd ('Company') do business. They do not affect your statutory rights. They are designed to set out clearly the Company's responsibilities and your rights.

1. Definitions

1.1. In these terms and conditions (hereinafter collectively referred to as 'Conditions'):

1.2. 'Customer' means you, the corporate entity requesting Services from the Company.

1.3. 'Contract' means the contract made between the Company and the Customer for performance of the Services as specified in this Agreement, the Statement of Work and an applicable Flowdown Addendum and any applicable Order. For the avoidance of doubt, any executed Order constitutes a separate Contract.

1.4. Deliverables means any Products and everything that is provided as part of the Services and/or produced by the supply of Services ordered pursuant to this Contract. Deliverables includes the expected final results, any unexpected results, and all intermediate results. Deliverables includes any results that are composed entirely of newly developed property and also any results that are composed of newly developed property combined with pre-existing property, (whether tangible or intangible). Specific Deliverables may be described in an Order.

1.5. Effective date means the date from which the parties agree that the terms agreed in the services contract will apply.

1.6. 'Fees' mean the fees set out in the Quote.

1.7. Intellectual Property Rights means without limitation, any and all inventions, patents, discoveries, improvements, utility models, trade-marks, copyrights, industrial designs, mask works, know-how, integrated circuit topographies and trade secrets, and all intellectual property in computer software, source code, object code, and related development work product, data, Confidential Information, and all intangible intellectual property or privileges of a nature similar to any of the foregoing, including in every case in any part of the world and whether or not registered, and shall include all intellectual property that is the subject matter of any applications and granted registrations for any of the foregoing.

1.8. Order(s) means a purchase order issued by Customer under and in accordance with this Contract for the Services (and Products as applicable) selected to be purchased by Customer (or its Subsidiaries) and provided by Company in accordance with this Contract as further described in clause.

1.9. 'Quote' means any statement outlining fees for the proposed products or services.

1.10. 'Man Day' means a period of 7.5 hours.

1.11. 'Parties' mean the Company and the Customer.

1.12. Personnel means the employees, officers, directors, independent contractors, agents, representatives (including Subcontractors) of a Party.

1.13. ‘Restricted Information’ means any information which is disclosed by either Party to the other Party pursuant to or in connection with any Contract (whether orally or in writing, and whether or not such information is expressly stated to be confidential or marked as such).

1.14. ‘Services’ means any services specified in the Statement of Work or equivalent which the Company provides to the Customer.

1.15. Service Level means the services levels as set out in Statement of Work and where applicable those specific additional service levels in respect of a Customer as set out in the applicable Order.

1.16. ‘Statement of Work’ means any statement in writing outlining services.

1.17. Subcontractor means an individual or company hired by Customer or the Company to perform a specific task(s) as part of the overall project and/or Services and/or to perform any part of Customer’s or Company’s obligations hereunder.

1.18. ‘Working Day’ means any day other than a Saturday or Sunday when banks are open for business in London.

1.19. In these Conditions, references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.20. In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.21. In these Conditions headings will not affect the construction of these Conditions.

2. Terms of Acceptance

2.1. The Customer agrees that these Conditions shall be the exclusive basis on which the Contract is made between the Company and Customer.

2.2. These Conditions shall not create any agency or partnership between the Parties or any third party.

2.3. A Contract is formed between the Customer and the Company when (and not before) the Customer signs off the Quote or the Statement of Work or notifies the Company in writing that the Quote or the Statement of Work has been accepted.

2.4. The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract.

3. Appointment of Company

3.1. The Customer appoints the Company to provide the Services.

4. Services to be Provided

4.1. The Services to be performed by the Company are set out in the Statement of Work.

4.2. The Company represents that it possesses the requisite skill, knowledge, expertise and experience to perform the Services.

4.3. The Company undertakes to perform the Services using reasonable care and skill, based on industry standards and practice.

4.4. Notwithstanding the generality of the preceding clauses in relation to the Services performed by the Company, the Company shall:

4.4.1. Perform the Services using qualified and experienced Personnel; and

4.4.2. be in accordance with sound principles and practices in the Company's industry.

4.5. The Company shall perform the Services on such dates specified in the Statement of Work and where such dates are not specified, the Parties shall mutually agree a suitable date and time for the performance of such Services. Where the Company is unable to perform the Services on the dates specified in the Statement of Work and/or previously agreed dates and times, the Company shall use best endeavours to inform the Customer prior to the Service dates and re-arrange an alternative mutually convenient date as close as is reasonably practicable to the original pre-agreed dates.

4.6. If at any time before the due completion of the Services, the Customer wishes to change all or any part of the Services to be performed by the Company, then the Customer shall provide the Company with full written particulars of such proposed changes and with such further information as the Company may reasonably require in connection with such proposed changes.

4.7. The Company shall then submit to the Customer as soon as reasonably practicable a full written quotation for such changes specifying what changes (if any) will be required to fees payable by the Customer to the Company and what adjustments will be required to the Statement of Work.

4.8. Upon receipt of such quotation the Customer may elect either:

4.8.1. To accept such quotation, in which case the Quote and the Statement of Work shall be amended in accordance therewith; or

4.8.2. to withdraw the proposed alterations in which case the Quote and the Statement of Work shall continue in force unchanged.

4.8.3. The Company shall be entitled to make a reasonable charge for considering such changes and preparing the said quotation.

4.9. The Company shall not be obliged to consider or make any changes to the Quote or the Statement of Work save in accordance with the aforesaid procedure. Pending agreement on any proposed changes, both Parties shall remain bound to comply with their obligations under the latest agreed Statement of Work.

4.10. The Customer undertakes that through the provision of the Services, all equipment, hardware, software and/or such ancillary equipment shall be in a suitable state to enable the Company to carry out the Services without delay and/or interruption.

4.11. The Customer shall provide the Company with reasonable access to such locations which the Company may require to access in order to perform the Services.

4.12. Where the Services including assessments including 'Phishing', 'Vishing', 'Smishing', 'Social Engineering', 'Hacking' and/or any activities defined as an offense under the United Kingdom Computer Misuse Act 1990, of Customer's information technology infrastructure or other Customer assets, the Customer consents to the Company and/or its authorised representatives carrying out such activities and grants to the Company and/or such representatives such authority to carry out such activities. The Customer agrees to obtain

authority to such activities from any relevant third parties, such as infrastructure hosting or management companies.

4.13. The Customer shall ensure that the work requested and specified in the Statement of Work does not breach Article 8 of the European Convention on Human Rights and does not entail interference in the private and family life, home or correspondence (except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others) of any individual. Furthermore, the Customer shall indemnify the Company against any liability or claim for damages under Article 8 of the European Convention on Human Rights and/or the Data Protection Act 2018 arising from the correct performance of the work requested in the Statement of Work.

4.14. Where the Statement of Work specifies:

4.14.1. That the term of the Contract is for a period longer than 12 months; and

4.14.2. that the Services are based on Man Days.

4.14.3. The Customer agrees that any unused and paid for Man Days will not be carried over to the following 12 months unless otherwise agreed by the Company in writing.

5. Fees

5.1. In consideration of the Company agreeing to provide the Services, the Customer shall pay to the Company the Fees in the amounts and times set out in the Quote.

5.2. Where not specified in the Quote, the net Fees shall be payable within 30 days from the receipt of the Company's invoice(s) unless otherwise agreed in writing by the Parties. For the avoidance of doubt, the Company may issue invoices for stage payments where the same has been agreed by the Parties.

5.3. All payments due under the Contract shall be paid in full without any deduction or withholding other than as required by law. The Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part.

5.4. If the Customer fails to pay the Company any sum due pursuant to the Contract, the Customer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 3% above the then current base lending rate of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment.

5.5. The Company reserves the right to suspend the Services and/or any part thereof until all outstanding sums owed by the Customer to the Company are settled.

5.6. No payment of any monies including the Fees shall be deemed to have been received until the Company has received cleared funds.

5.7. Unless otherwise agreed by the Parties, all payments by the Customer to the Company shall be in Sterling.

5.8. The Company shall be entitled to charge the Customer for all reasonable expenses, including but not limited to travel and subsistence, incurred by the Company and the Company's representatives in connection with the provision of the Services.

6. Liability

6.1. Nothing in this Agreement limits or excludes liability of:

6.1.1. Either Party to other Party for: (i) bodily injury or death resulting directly from the negligence of the other Party, (ii) fraud or fraudulent misrepresentation; or (iii) any liability that cannot be limited or excluded under the law.

6.1.2. Company's indemnity obligations under clause 11.

6.2. Without prejudice to Clause 6.1 above, the entire liability of the Company under or in connection with the Agreement, whether 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 Agreement shall be limited to:

6.2.1. In respect of matters for which the Company does not carry insurance an amount equal to the 200% of annual fees ; and

6.2.2. in respect of matters for which the Company carries insurance, the insured value:

- Professional Indemnity Insurance: £5,000,000
- Public and Products Liability Insurance: £5,000,000
- Employers Liability Insurance: £10,000,000

6.3. The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Consultancy's obligations in relation to the Services, if the delay or failure resulted directly from any act or omission of the Customer.

6.4. Without prejudice to Clause 6.1 above, the entire liability of the Customer under or in connection with the Agreement, whether 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 Agreement shall not exceed 100% of the amount of fees paid by Customer in the 12 month period preceding the date on which the liability arises.

6.5. The provisions of this Clause 6 shall survive the termination of the Contract.

6.6. The exclusions and limitations of liability set out in this Clause 6 shall be considered severally. The invalidity or unenforceability of any one of these sub-clauses shall not affect the validity or enforceability of any other part of this Clause 6.

7. Confidentiality

7.1. Except as provided by Clauses 7.2 and 7.3, each Party shall at all times during the continuance of the Contract and after its termination:

7.1.1. Use its best endeavours to keep all Restricted Information confidential and accordingly not to disclose any Restricted Information to any other person;

7.1.2. and, not use any Restricted Information for any purpose other than the performance of the obligations under this Agreement.

7.2. Any Restricted Information may be disclosed by either Party to the other Party to:

7.2.1. Any governmental or other authority or regulatory body; or

7.2.2. any of either Party's employee(s) for the purposes of carrying out its obligations under the Contract.

7.2.3. To such extent only as is necessary for the purposes contemplated by the Contract or as is required by law and subject in each case to each Party using its reasonable endeavours to ensure that the person in question keeps the same confidential and does not use the same except for the purposes for which the disclosure is made.

7.3. The obligations of confidentiality specified in this Clause 7 shall not apply to any Classified Information:

7.3.1. Already known to the receiving party;

7.3.2. which is in the public domain other than by breach of the obligations of this clause by either party;

7.3.3. Is received from a third party otherwise than in breach of an obligation of confidentiality;

7.3.4. which the Company requires to carry out DBS checks and NCSC checks;

7.3.5. Is independently developed by the recipient without access to any or all of the disclosing party's Confidential information; or

7.4. The Parties agree that this Clause 7 shall survive the termination and/or expiry of the Contract for whatsoever reason.

8. Intellectual Property Rights

8.1. Each Party acknowledges that all intellectual property disclosed by the other Party is exclusively owned by the disclosed Party and/or is lawfully licensed to the disclosing Party.

8.2. The disclosing Party grants to the receiving Party a non-exclusive licence to use any intellectual property for the purposes contemplated under the Contract.

8.3. Where the Company proposes to incorporate any Intellectual Property Rights by a third party into any Deliverable, it shall use reasonable endeavours to procure that such Intellectual Property Rights are licensed on terms which are consistent with, and enable the Company to grant the licence as specified in clause 12. Where the Company does not obtain a licence on such terms, the Company shall not incorporate such Intellectual Property Rights into any Deliverable without the prior agreement of Customer.

8.4. Customer will own all Intellectual property in any products, Deliverables, documentation and any other material (or any residual IP arising therefrom) which is created at the request of, and uniquely for, any Customer's Customer.

8.5. If for any reason ownership of any such Deliverable does not automatically own by the Customer, the Company shall execute an assignment, or procure the assignment of, all right, title and interest in the Deliverable (or relevant Intellectual Property Rights) to Customer.

9. Termination

9.1. Either Party may (without limiting any other remedy) at any time terminate the Contract with immediate effect by giving written notice to the other if:

9.1.1. The other Party commits any material breach of the Contract and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so; or

9.1.2. An order is made or a resolution is passed for the winding up of the other party, or (in the case of an individual or firm) becomes bankrupt, makes a voluntary arrangement or composition with his or its creditors or has a receiver or administrator appointed or the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

9.2. Without prejudice to Clause 9.1 above, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to make payment of any amount payable under the Contract within 60 days of the due date.

9.3. Upon termination of this Agreement or Contract for any reason, each party shall return to the other party any Restriction Information or materials of the other party or at the other party's request, destroy such information and certify such destruction.

10. Freedom of Information

10.1. For the purposes of this Clause 10 the following expressions shall have the following meanings:

10.1.1. 'Exempted Information' means any information or category of information, document, report, contract or other material containing information relevant to this Contract that has been designated by the Company and the Customer as potentially falling within an FOIA Exemption.

10.1.2. 'FOIA' means the Freedom of Information Act 2000.

10.1.3. 'FOIA Exemption' means any applicable exemption to the FOIA including, but not limited to, confidentiality (section 41 FOIA), trade secrets (section 43 FOIA) and prejudice to commercial interests (section 43 FOIA).

10.2. The Customer recognises that the Company is subject to legal duties which may require the release of information under FOIA or other legislation or codes governing access to information and that the Company may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under this Contract. The Company recognises that each request for information must be considered individually and that any decision to disclose information will be the decision of the Customer.

10.3. Notwithstanding anything in this Contract to the contrary including, but without limitation, the general obligation of confidentiality imposed on the parties pursuant to Clause 10.2, in the event that the Customer receives a request for information under the FOIA or any other applicable legislation governing access to information, the Customer shall be entitled to disclose all information and documentation (in whatever form) as necessary to respond to that request in accordance with the FOIA or such legislation, save that in relation to any such information that:

10.3.1. Is Exempted Information, the Customer shall consult the Company as soon as reasonably practicable, and the Company agrees to respond to such a consultation within 7 days of receiving the consultation notice.

10.3.2. Is Exempted Information and within the scope of an absolute exemption to the FOIA, the Customer shall rely on the FOIA Exemption, at the Company's request and cost, and use best endeavours to ensure that the Exempted Information remains withheld, including the lodging of any appeal against a decision by the Information Commissioner in relation to the request.

10.3.3. Is Exempted Information and within the scope of a non-absolute exemption to the FOIA, the Customer shall use reasonable endeavours to consult the Company as soon as reasonably practicable and shall not:

10.3.3.1. Confirm or deny that the information in question is held by the Customer.

10.3.3.2. Disclose the information requested, to the extent that in the Customer's opinion (having taken into account the views of the Company) that exemption is or may be applicable in accordance with the relevant section of the FOIA in the circumstances.

10.4. In the event that the Customer incurs any costs, including but not limited to reasonable legal costs, in seeking to maintain the withholding of the information, including but not limited to responding to information notices or lodging appeals against a decision of the Information Commissioner in relation to disclosure, the Company shall indemnify the Customer, save that the Customer shall use reasonable endeavours to consult the Company before incurring any such costs.

10.5. In any event the Customer shall not be liable for any loss, damage, harm or other detriment however caused arising from the proper disclosure of any information relating the Contract under FOIA or other applicable legislation governing access to information.

11. Indemnities

11.1. Company shall indemnify and keep indemnified Customer against:

11.1.1. Any third party claim arising out of or in connection with Company's breach of its obligations under clause 7 (Confidential Information);

11.1.2. Breach of any data security or data protection obligations under this Agreement;

11.1.3. All losses, claims, damages, liabilities, fines, interest, penalties, costs, charges, sanctions, expenses, compensation paid to Data Subjects (including compensation to protect goodwill and ex gratia payments), demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the Company of its obligations under this clause 11 ;

11.1.4. All amounts paid or payable by Customer to a third party or Customer which would not have been paid or payable if the Company's breach of this clause had not occurred.

11.1.5. Any third-party claim of infringement or misappropriation of an Intellectual Property Right alleged to have occurred because of the Services, Deliverables and/or Products provided by Company to Customer or Customer's Customers under this Agreement or based on performance of the Services;

11.1.6. All claims, losses, damages, costs or reasonable expenses arising from Company's failure to obtain such required consents and licenses for Customer and its Customer's use of the Services and Deliverables pursuant to this Agreement and the applicable Order. and

11.1.7. any and losses arising out of inaccuracy of the representation or breach of the Intellectual Property warranties.

12. Licences

12.1. Where Customer and its Customer's use of the Services and/or Deliverables requires a license to use such Service and/or Deliverables pursuant to this Agreement and the applicable Order, Company grants to Customer for the duration of the Term (unless otherwise agreed by the parties in an Order), a non-exclusive royalty-free licence to (i) use the Services and to use, operate, copy and modify the Deliverables and (ii) sublicence such licence rights to its Subsidiaries and Customers.

12.2. Where the Services and/or Deliverables contain third party products, software, services or materials, the Company shall at no additional cost to Customer, obtain all required consents and licenses of such third parties required for Customer and its Customer's use of the Services and Deliverables pursuant to this Agreement and the applicable Order.

13. Warranties on Services and Deliverables

13.1. Company shall endeavour to improve their performance of the Services under this Agreement whilst it is in force and warrant that:

a) For the Term of this Agreement, Services will be supplied in accordance with the generally accepted industry practices and procedures used in well- managed operations performing services the same or substantially similar to the Services (the "Standard of Care"), in a manner meeting the Service Levels and will conform to the Order; and

b) For twelve (12) months following acceptance of the Deliverables, such Deliverables will be free from defects in material and workmanship;

c) All Company's Workers shall possess appropriate education, training, skills and experience for tasks assigned under or in connection with this Agreement,

d) It either owns or is authorised to use, and will, during the Term, be the owner of or authorized to use, the Services and Products supplied by Company or used to perform the Services and any software, developments and Deliverables developed by Company as part of the Services,

e) It does not and has not infringed or misappropriated any Intellectual Property Rights of any third party, and shall perform its obligations under this Agreement in a manner that does not infringe or constitute an infringement or misappropriation of any Intellectual Property Rights of any third party; and

f) As of the Effective Date, there is no pending or threatened claim against Company: (i) that allege that any of the Products, Deliverables and/or Services or Company's manner of performing the Services infringe or constitute an infringement or misappropriation of any Intellectual Property Rights of any third party; or
(ii) that could otherwise have a material adverse effect on its ability to comply with its obligations under this Agreement, and Company is not aware of any circumstance that could give rise to any such claim.

13.2. In the event of a breach of the above warranties set out in this Clause 13, Company shall at its sole expense re-perform the Services and shall at Customer's sole option either repair or replace the Deliverables within 48 hours of receiving written notification of such breach or refund Customer all fees paid for such defective Services and/or Deliverables.

13.3. Each Party warrants to the other Party that, as of the Effective Date:

a) it has the necessary power and authority to enter into this Agreement and to carry out the transactions contemplated by the Agreement;

b) the execution, delivery and performance of this Agreement will not constitute a violation of any judgment, order or decree; and

c) the execution, delivery and performance of this Agreement does not constitute and will not cause a material default under any material contract of such Party.

14. Notice

14.1. Any notice required to be given to the Company shall be given by first class post addressed to the Company' trading address.

15. Non-Exclusive

15.1. Nothing in this Agreement shall preclude either Party from entering into similar relationships with other companies, nor shall this Agreement preclude either Party from independently developing or marketing any Products that are similar to or may compete with the other Party's Products; provided, however, that the independent development or marketing of such Products is not done in a manner that breaches the terms of this Agreement, specifically the terms of Confidentiality in Clause 7.

15.2. Nothing in this Agreement shall be construed as precluding either Party from testing or using the Products of the other Party outside of the scope of this Agreement as long as such testing or use does not breach any of the terms of this Agreement or any other written Agreement.

16. Non-Solicitation and Non-Compete

16.1. Without the prior written consent of Customer, Company shall not directly or indirectly, or cause a third party to solicit, hire or engage any Personnel of Customer or Customers during the performance of the Agreement and the 12 months following its termination for any reason. Company acknowledges that the Personnel of Customer or Customer(s) represent a significant investment in recruitment and training, the loss of which would be detrimental to or Customers' current and future business and profits. Company further recognises that determining the damages in the event of a breach of this provision is very difficult and therefore agree that if Customer breaches this provision and hires or engages Personnel of Customer or Customer(s) covered hereunder, Company shall pay to Customer, or its Customer(s) where applicable, as damages for the breach an amount equal to 2 times the annual compensation of the person, based on the rate of pay as of the last day of employment with Customer or Customer as applicable.

16.2. During the term of this Agreement and for a period of 12 months thereafter, Company shall not solicit or accept direct business from any client of Customer in respect of services which are the same or similar to that which has been Ordered from Company by Customer. Company further recognises that determining the damages in the event of a breach of this provision is very difficult and therefore agree that if Company breaches

this provision and solicits and or accepts business of Customer covered hereunder, Company shall pay to Customer as damages for the breach an amount equal to the greater of £50,000.00 (Fifty Thousand Pounds sterling) or two times the revenue which would have been realised by Customer

17. Assignment and Subcontracts

17.1. Company may not assign or otherwise transfer this Agreement or subcontract Services and/or Deliverables set out in an Order without Customer's prior written approval. Even if an assignment or subcontract is approved by Customer, Company will continue to be responsible for the Services and/or Deliverables provided under this Agreement and the Company's obligations hereunder. Customer may upon notice to Company, assign or otherwise transfer its rights and obligations under this Agreement to any of its Associated Companies, successors or assigns.

18. Force Majeure

18.1. Neither party shall be liable for default or delay under the Agreement for unavoidable or unforeseeable causes beyond its reasonable control (Force Majeure Events). Company will be excused from continuing the affected performance until it is able to recommence its performance provided that Company continues to use Commercially Reasonable Efforts to recommence performance. Company shall immediately notify Customer by telephone (to be confirmed in writing within 2 business days after the inception of such delay) If Company is unable to perform its obligations for a period of more than 30 days by reason of a Force Majeure Event, Customer may cancel all or part of the Order. Customer will have no liability for the cancellation other than payment for work completed and accepted.

19. Severability

19.1. The invalidity or unenforceability for any reason of any provision of this Agreement shall not prejudice or affect the validity or enforceability of its other provisions.

20. Entire Agreement

20.1. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter of this Agreement and supersedes all prior Agreements, representations, negotiations and discussions between the Parties (whether or not in writing) relating to it. This shall include but is not limited to any existing or future maintenance service contracts or clauses or sub-clauses issued by the Company for specific sites during the period of this Agreement. Each Party represents that it has not entered into this Agreement in reliance on any representation, warranty or undertaking express or implied or in writing, given or made by or on behalf of the other Party except insofar as contained in this Agreement. This clause shall not apply to any representation, warranty or undertaking made fraudulently or which was induced by fraud.

21. Waiver

21.1. Failure by either Party at any time to enforce any of the provisions of this Agreement shall not be construed as a waiver by the other of any such provision or in any way affect the validity of this Agreement or any part thereof.

22. Third Party Rights

22.1. Subject to the rights of Company's Customers as expressly set out in this Agreement, a party who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This shall not affect any right or remedy that exists or is available apart from under that Act.

23. Reporting, Record and Audit

Reporting and Records

23.1. The Company shall:

23.1.1. Maintain all books, financial information, accounts, records and quality control information (i) relating to the delivery of the Services (including the calculation of any Charges, any evidence or certifications compliance with Applicable Law) under this Agreement and all Reports, and/or (ii) which are required to be maintained by Applicable Laws (together "Records") and ensure that such Records shall be comprehensive, accurate and reliable; and

23.1.2. Retain and properly store all Records during the Term and following termination or expiry for at least three (3) years.

Audit

23.2. The Company shall permit Customer and/or its representatives and regulators upon reasonable notice access to any of the Company's premises. Personnel and relevant Records and allow such parties to inspect, make copies and take experts) throughout the Term and following termination or expiry for at least (2) years in order to:

23.2.1. Fulfil any legally enforceable request by any regulatory body; or

23.2.2. Verify of the accuracy of the Fees or identify suspected fraud; or

23.2.3. Verify that the Services are being provided and all obligations of the Company are being performed in accordance with this Agreement;

23.2.4. Verify that the Company's and its subcontractors' system protect the integrity, operational availability, confidentiality and security of Customer Data; or

23.2.5. Evaluate any actual or suspected Data Breach.

23.3. Subject to Customer's confidentiality obligations under this Agreement, the Company shall provide (and shall procure that the Personnel provide) Customer (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to an audit.

23.4. If an audit identifies that:

23.4.1. The Company is failing to comply with any of its obligations under this Agreement then, without prejudice to Customer's other rights and remedies, the Company shall take the necessary steps to comply with its obligations at no additional cost to Customer; or

23.4.2. Customer has overpaid any fees, the Company shall pay to Customer the amount overpaid (for the avoidance of doubt taking into account any amounts which the audit reveals were underpaid by Customer) within thirty (30) days from the date of receipt of an invoice or notice to do so.

23.5. The Parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this Clause 22, unless:

23.5.1. Where any examination undertaken pursuant to these audit provisions reveals that the Company has incorrectly invoiced Customer for any aspect of the Services in any relevant invoice period by more than 5% of the actual Fees due for that relevant invoice period then the Company shall be liable to Customer for the reasonable cost of the aspects of such examination which specifically related to the accuracy of fees; or

23.5.2. The audit identifies a material breach by the Company of its obligations pursuant to this Agreement.

24. Title and Risk

24.1. Where products and/or Deliverables are to be delivered by Company, risk shall pass to Customer upon receipt of delivery and title shall pas upon payment in full by Customer;

24.2. Provided that Customer may resell such Products and/or Deliverables and transfer good title to its Customer's Customers, provided that the sale is in the ordinary course of its business and it is a sale of Company's property on Customer own behalf and Customer shall dal as principal in making the sale.

25. General

25.1. The Company may perform any of its obligations or exercise any of its rights hereunder by itself or through any other third party Subcontractors. Where the Services (or part thereof) are performed by such third party Subcontractors, any act or omission of any such this party Subcontractors shall be deemed to be the act or omission of the Company.

25.2. Where applicable, the Customer shall procure such consent from the relevant Data Subjects (as defined in the Data Protection Provisions) to enable the Company to perform the Services which shall include the disclosure of personal data (as defined by the Data Protection Act 2018) for:

25.2.1. The purpose of carrying out DBS and NCSC checks;

25.2.2. Such other purposes which the Company may reasonably require.

25.2.3. Processing Customer Personal Data.

25.3. As the Services undertaken by the Company are based on the information and assistance provided by the Customer, it is the Customer's responsibility to provide the Company with accurate, complete and timely information and/or instructions in order for the Company to properly perform such Services for the Customer. In addition, it is the Customer's responsibility to notify the Company immediately of any changes in circumstances which could render any information the Customer previously provided to the Company to be inaccurate or which would otherwise have a bearing on the advice being rendered and/or services being performed. For the avoidance of doubt and notwithstanding any other provisions set out in these Conditions and any other Agreement, contracts entered into between the Parties, the Company does not accept any liability for inaccurate, errors, losses, damages, failures, any missed timelines or problems which arises as a result of the Customer not providing the Company with accurate, complete and timely information and/or instructions.

25.4. These Conditions contain the terms and conditions in respect of the Entire Agreement between the parties and both Parties acknowledge that they have not relied upon any oral or written representation made to them by the other. In addition, these Conditions supersede all prior agreements entered into between the Parties.

25.5. Each party irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation whether or not contained in the Contract for breach of any warranty not contained in these Conditions unless such misrepresentation or warranty was made fraudulently.

25.6. No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

25.7. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

25.8. Both Parties shall be released from their respective obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the reasonable control of the Parties or either of them renders the performance of the Contract impossible whereupon all money due but unpaid under the Contract shall be paid immediately.

26. Law and Jurisdiction

26.1. These Conditions shall be governed by and construed in accordance with English law and the English Courts shall have jurisdiction.