# SLA Online for Comms Terms and Conditions

THIS AGREEMENT is made the **[insert day]** day of **[insert Month]**, **[insert Year]**

BETWEEN:

1) **[insert Client Name]** (the "Client"); and
2) FRONTLINE DATA LIMITED whose registered office is at Suite 19 North Colchester Business Centre, 340 The Crescent, Colchester Essex CO4 9AD and whose company registered number is 05427762 (the "Service Provider").

WHEREAS:

a) The Service Provider has agreed to provide the Client with a data management service in the form of an online system hosted on servers provided by a third party. The Service Provider grants the Client a non-exclusive licence to access and use the Modules making up the Online System during the contract period. The solution enables the Client to input data into the online system and generate reports which contain the inputted data. In addition, the solution allows third parties to order and purchase services from the Client via the Online System. The SLA Online for Comms system is an off the shelf product that is currently used by a number of local authorities.
b) The Client appoints the Service Provider, and the Service Provider hereby accepts the appointment, to supply the online system and associated services. The Service Provider shall perform these obligations in accordance with this Agreement upon the terms and conditions set out below.

NOW IT IS HEREBY AGREED as follows:

## 1. Definitions

In this Agreement the following words and expressions shall have the following meanings:

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| "Additional Module" | means the additional, optional modules that are able to be accessed via the Online System; |
| "Additional Module Fees" | means the fees charged by the Service Provider in respect of Additional Modules detailed in Appendix B, Schedule of Charges; |
| "Agreement" | means these terms and conditions and the attached Appendices and Schedules; |

 

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| "Authorised Officer" | means each Party's authorised officer appointed from time to time in accordance with, and having the authority set out at, Clause 21 including their duly authorised representatives; |
| "Annual Fees" | means the fixed annual license fee detailed in Appendix B, Schedule of Charges, payable by the Client for use of the Online System in accordance with the provisions of Clause 6; |
| "Client Users" | means all individuals with a user account within the Online System, stored in the Database for the Client, including, but not limited to; employees (including agency staff and voluntary staff), third parties (introduced by the Client), school staff, governors, childminders and other Client Customers; |
| "Commencement Date" | means the **[insert date]**; |
| "Confidential Information" | means any confidential data not covered by the Data Protection Legislation including but not limited to any information that a third party has submitted to the Client on a confidential basis; |
| "Contract Period" | means an initial period of **[insert number]** years subject to any earlier termination (in accordance with Clause 16 or otherwise in accordance with the law) or extension (in accordance with Clause 2); |
| "Contract" | means this Contract together with its appendices and all documentation referred to in this Contract; |
| "Customer" | means an organisation using and accessing the Online System via this Agreement including, but not limited to, local education authority schools, Academy schools, Early Years Settings, Childminders, Public Bodies, Private Business, and other Educational Settings. |
| "Customer Success Services" | means the Service Provider's policy for providing support in relation to the Services as defined in the Specification; |
| "Cybersecurity Requirements" | means all laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international |

 

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| | and national standards, applicable to either Party, relating to security of network and information systems and security breach and incident reporting requirements, including (but not limited to) the Data Protection Legislation, the Network Systems and Regulations 2018 (SI 506/2018), The Communications Act 2003, The Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426), The Computer Misuse Act 1990, all as amended and updated from time to time; |
| "Data" | means any information or files. |
| "Database" | means an organised collection of data stored and accessed electronically; |
| "Data Protection Legislation" | means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party; |
| "Data Controller" | has the meaning given to it in the Data Protection Legislation; |
| "Data Loss Event" | has the meaning given to it in the Data Protection Legislation; |
| "Data Processor" | has the meaning given to it in the Data Protection Legislation; |
| "DPA" | means the Data Protection Act 2018; |
| "Data Protection Impact Assessment" | has the meaning given to it in the Data Protection Legislation; |
| "Data Protection Officer" | has the meaning given to it in the Data Protection Legislation; |
| "Data Subject" | has the meaning given to it in the Data Protection Legislation; |
| "Data Subject Access Request" | means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data; |

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| "Fees" | means any Annual Fees, Additional Module Fees, Setup Fees, and Training Fees payable to the Service Provider within this Agreement; |
| "Functionality" | means the functionality of the Online System as specified in the Specification; |
| "Good Industry Practice" | means the degree of skill, care, prudence, efficiency, foresight, and timeliness as would be expected from a leading company within the relevant industry or business sector; |
| "Intellectual Property Rights" | means all copyright, patents, or patent rights, registered and unregistered design rights, trademarks, service marks, database rights, trade or business names, domain names, inventions, logos, design rights (whether registerable or otherwise), applications for the foregoing, know-how and all other intellectual property rights whatsoever in the world enforceable and the right to sue for passing-off; |
| "Modules" | means the core features of Trading, Training, Resources and Communication included within the Online System |
| "Online Knowledge Base" | means the online training manual explaining how the Online System is able to be used; |
| "Online System" | means the hosted online system comprising of the Modules, and having the Functionality, described in the Specification; |
| "Party" | means the Client and/or the Service Provider; |
| "Personal Data" | has the meaning given to it in the Data Protection Legislation; |
| "Personal Data Breach" | has the meaning given to it in the Data Protection Legislation; |
| "Processing" | has the meaning given to it in the Data Protection Legislation; |
| "Processor Personnel" | all directors, officers, employees, agents, consultants, and contractors of the Service Provider and/or of any Sub-processor of the Service Provider; |
| "Protective Measures" | means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, |

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| | ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it; |
| "Reports" | means any webpage, report or graph that displays Data; |
| "Schedule of Charges" | means the charges, fees and arrangements set out in Appendix B, Schedule of Charges. |
| "Servers" | means the secure hosted servers to be provided by the Service Provider in accordance with the requirements set out in the Agreement; |
| "Server Provider" | means the third party who is from time to time providing the Servers; |
| "Services" | means the hosting of the Server, the maintenance and support services and the technical support services in respect of the Client's use of the Online System (including any Additional Modules); |
| "Setup Fees" | means the initial data integration work and setup fee set out in Appendix B, Schedule of Charges, |
| "Specification" | means the specification attached at Appendix A; |
| "Sub-processor" | means any third party appointed to process Personal Data on behalf of the Service Provider related to this Agreement; |
| "Training Fees" | means the fees associated with providing training for Client Users set out in Appendix B, Schedule of Charges, |
| "UK GDPR" | has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; |
| "VAT" | means Value Added Tax in accordance with the Value Added Tax Act 1994; |
| "Web Scraping" | means an automatic method to obtain large amounts of data from websites; |

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| "Working Day" | means any day other than a Saturday, Sunday, bank holiday or public holiday in England; |
| "Working Hours" | means between 09:00 and 17:00, Mondays to Fridays, excluding Public Holidays; |

1.1. In this Agreement unless the context or the clause otherwise provides, a reference to one gender shall include a reference to the other genders.

1.2. In this Agreement, unless the context otherwise requires, words in the singular shall include the plural and the plural shall include the singular.

1.3. In this Agreement the expressions Client, Server Provider and Service Provider shall include their respective successors, personal representatives, employees and permitted sub-contractors and assigns or transferees.

1.4. In this Agreement reference to any statute, enactment, order, regulation or other similar instrument shall be construed as including a reference to any amendment contained in any subsequent re-enactment and a reference to any subordinate legislation.

1.5. Each Party shall comply with any express obligation in this Agreement to comply with any statute, enactment, order, regulation, or other similar instrument that is referenced in this Agreement.

1.6. In this Agreement headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

1.7. In this Agreement references to Clauses, Schedules and Appendices are, unless otherwise provided, references to clauses, schedules, and Appendices to this Agreement.

1.8. In the event of any conflict between these terms and conditions and the appended Schedules and Appendices, these terms and conditions shall prevail at the Service Provider's sole discretion.

1.9. Except as otherwise expressly provided in this Agreement, all remedies available to the Service Provider or to the Client for default under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

## 2. Contract Period

2.1. This Agreement shall commence on the Commencement Date and shall continue in force for an initial term of **[insert number]** years up to and including the **[insert date]** unless terminated earlier in accordance with the provisions of this Agreement or extended in accordance with Clause 2.2.

2.2. The Client may, at its sole discretion, extend the Agreement beyond the initial **[insert number]** year term by the Client giving 2 months' notice to the Service Provider in writing. The Contract Period may be extended, on one or more occasions, for a maximum additional period of up to **[insert number]** years beyond the initial term of **[insert number]** years.

2.3. The Parties agree that the Client may choose to purchase, or cease to use, an Additional Module at any time during the Contract Period. For the avoidance of doubt the Client ceasing to use an Additional Module shall not cause the Agreement to terminate.

## 3. Licence

3.1. The Service Provider hereby grants to the Client a non-exclusive, non-transferable right for the Users to use the Online System, the Online Knowledge Base and otherwise access the Services during the Contract Period.

## 4. Service Provider Obligations

4.1. The Service Provider shall provide the Services, the Online System, and the Online Knowledge Base during the Contract Period in accordance with this Agreement and in reasonable accordance with Good Industry Practice.

4.2. The Service Provider shall as part of the Services and at no additional cost to the Client, provide the Client with standard customer support services during Working Hours in accordance with the Service Provider's Customer Success Services in effect at the time that the Services are provided.

4.3. The Service Provider warrants and represents that the Online System will provide the Functionality during the Contract Period.

4.4. The Service Provider warrants and represents that the Online System and the Services shall be provided in accordance with the Cybersecurity Requirements and the security requirements detailed in the Specification. The Service Provider shall assist the Client as the Client reasonably requires to ensure the Client's compliance with the Cybersecurity Requirements.

4.5. The Service Provider shall select an appropriate organisation to act as Server Provider and the Service Provider reserves the right to change the approved Server Provider from time to time during the Contract Period and shall notify the Client in writing of any such change.

4.6. The Service Provider undertakes that wherever possible any routine maintenance of hardware and software infrastructure on which the Online System is located, or the Online System shall be undertaken outside Working Hours.

4.7. The Service Provider reserves the right to carry out emergency maintenance work at any time giving to the Client as much warning as reasonably possible.

4.8. The Service Provider will notify the Client via email of modifications, updates, and improvements that it may make to the Online System or the Services generally during the Contract Term.

4.9. The Service Provider shall establish and maintain safeguards against the destruction and loss of any data that is loaded on to the Online System in accordance with Good Industry Practice for service providers providing online systems similar to the Online System in order to minimise the risk of the destruction, corruption of such data and/or the risk of third parties being able to gain unauthorised access to the Online System.

4.10. The Service Provider warrants and undertakes that it has and will maintain the necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

4.11. The Service Provider takes no responsibility and will not be liable for any content advice or comment generated as a consequence of the Services.

## 5. Client Obligations

5.1. The Client will ensure that adequate training and guidance is provided to all users, staff, and representatives prior to them accessing the Online System.

5.2. The Client recognises that additional, refresher training may be required during the Contract Period to ensure continued competence, and to utilise new or updated Functionality.

5.3. The Client will only access the Data and Reports through the Online System.

5.4. The Client will not attempt to modify the Online System in any way.

5.5. The Client will not extract, or attempt to extract, Data from the Online System except through the dedicated Reports and provided Functionality. Specifically, the Client will not use Web Scraping to extract Data from the Online System.

5.6. The Client will be responsible for the interpretation of the Reports, their presentation to third parties, and any advice given upon their basis.

5.7. The Client will maintain appropriate security and password policies and procedures, in accordance with Good Industry Practice, and will ensure that Client Users are aware of these.

5.8. The Client will not undertake, commission or allow any user to perform, penetration testing, vulnerability scanning or any other monitoring, of the Online System without written approval from the Service Provider.

## 6. Charges

6.1. The Client will pay the Setup Fees, Training Fees, Annual Fees, and Additional Module Fees to the Service Provider. Subject to the provisions regarding review of the Additional Module

Fees at Clause 6.8, this is a fixed price contract and there shall be no increase to the Annual Fees or the Additional Module Fees.

6.2. The first payment of the Annual Fees and the Additional Module Fees shall be due on the Commencement Date and subsequent payments shall be made annually and shall be due from the anniversary of the Commencement Date.

6.3. Payment of Setup Fees and Training Fees shall be due on the Commencement Date.

6.4. Except as otherwise expressly set out in this Agreement, the Annual Fees, Additional Module Fees, Setup Fees and Training Fees payable to the Service Provider under this Agreement shall be inclusive of all costs, expenses (including without limitation parking, travel, subsistence and accommodation expenses), all fees, disbursements, labour, equipment, goods, materials, transport, insurance, administration, operating costs, telephones, faxes, profit and all general risks, taxation, duties, liabilities and obligations set out in or implied as necessary to comply with this Agreement.

6.5. All sums payable under this Agreement unless otherwise stated are exclusive of VAT, which shall be payable by the Client in the manner and at the rate prescribed by law, provided the Service Provider has submitted a valid VAT invoice.

6.6. The Client shall pay the Service Provider the Fees within 30 days of receipt of a valid VAT invoice. The relevant day for payment for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 shall be 30 days after the receipt by the Client of a valid invoice (the "Relevant Day"). All sums due from the Client to the Service Provider that are not paid on the Relevant Day shall, where claimed, bear simple interest from day to day from the day after the Relevant Day until the actual date of payment at the rate of 2% per annum above Barclays Bank Plc base rate from time to time until payment in full is made.

6.7. The Service Provider may only uplift the Additional Module Fees by giving the Client two month's written notice in advance of an anniversary of the Commencement Date. For the avoidance of doubt the Annual Fees shall remain fixed for the Contract Period.

## 7. Staffing Resources

7.1. The Service Provider shall ensure that sufficient resources (including staffing resources) as required to discharge the Service Provider's obligations under the Agreement are deployed and maintained during the Contract Period.

7.2. The Service Provider shall ensure that their employees, or permitted agents and subcontractors, engaged for the performance of the Services are sufficiently qualified, experienced, and trained and instructed with regards to the proper execution of the Services.

 

7.3. The Client shall ensure that sufficient resources (including staffing resources) as required to utilise and administer the Online System are deployed and maintained during the Contract Period.

## 8. Confidentiality

8.1. Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under this Agreement. A Party's Confidential Information shall not be deemed to include information that:

8.1.1. is or becomes publicly known other than through any act or omission of the receiving Party;

8.1.2. was in the other Party's lawful possession before the disclosure;

8.1.3. is lawfully disclosed to the receiving Party by a third party without restriction on disclosure; or

8.1.4. is independently developed by the receiving Party, which independent development can be shown by written evidence.

8.2. Subject to Clause 8.4, each Party shall hold the other's Confidential Information in confidence and 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 this Agreement.

8.3. 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 this Agreement.

8.4. A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 8.4, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.

## 9. Data Protection

9.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client will be the Data Controller and the Service Provider shall be the Data Processor unless otherwise specified in Appendix C (Processing Personal Data and Data Subjects). The only processing that the Data Processor is authorised to do is listed in Appendix C (Processing

Personal Data and Data Subjects) and may not be otherwise determined by the Data Processor.

9.2. The Data Processor shall notify the Data Controller immediately if it considers that any of the Data Controller's instructions infringe the Data Protection Legislation.

9.3. The Data Processor shall provide all reasonable assistance to the Data Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Data Controller, include:

9.3.1. a systematic description of the envisaged processing operations and the purpose of the processing;

9.3.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;

9.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and

9.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data

9.4. The Data Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

9.4.1. process that Personal Data only in accordance with Appendix C (Processing Personal Data and Data Subjects) unless the Data Processor is required to do otherwise by Law. If it is so required, the Data Processor shall promptly notify the Data Controller before processing the Personal Data unless prohibited by Law;

9.4.2. ensure that it has in place Protective Measures which have been reviewed and approved by the Data Controller as appropriate to protect against a Data Loss Event having taken account of the:

i. nature of the data to be protected;

ii. harm that might result from a Data Loss Event;

iii. state of technological development; and

iv. cost of implementing any measures;

9.4.3. ensure that:

i. the Data Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Appendix C (Processing Personal Data and Data Subjects));

ii. it takes all reasonable steps to ensure the reliability and integrity of any Data Processor Personnel who have access to the Personal Data and ensure that they:

a) are aware of and comply with the Data Processor's duties under this Clause 9;

b) are subject to appropriate confidentiality undertakings with the Data Processor or any Sub-processor;

c) are informed of the confidential nature of the Personal Data and do not publish, disclose, or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Data Controller or as otherwise permitted by this Agreement; and

d) have undergone adequate training in the use, care, protection, and handling of Personal Data;

9.4.4. not transfer Personal Data outside of the EU unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:

i. the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of UK GDPR) as determined by the Data Controller;

ii. the Data Subject has enforceable rights and effective legal remedies;

iii. the Data Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Data Controller in meeting its obligations); and

iv. the Data Processor complies with any reasonable instructions notified to it in advance by the Data Controller with respect to the processing of the Personal Data;

9.4.5. at the written direction of the Data Controller, delete or return Personal Data (and any copies of it) to the Data Controller on termination of the Agreement unless the Data Processor is required by Law to retain the Personal Data.

9.5. Subject to Clause 9.7, the Data Processor shall notify the Data Controller immediately if it:

9.5.1. receives a Data Subject Access Request (or purported Data Subject Access Request);

9.5.2. receives a request to rectify, block or erase any Personal Data;

9.5.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

9.5.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

9.5.5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

9.5.6. becomes aware of a Data Loss Event.

9.6. The Data Processor's obligation to notify under Clause 9.5 shall include the provision of further information to the Data Controller in phases, as details become available.

9.7. Taking into account the nature of the processing, the Data Processor shall provide the Data Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 9.5 (and insofar as possible within the timescales reasonably required by the Data Controller) including by promptly providing:

9.7.1. the Data Controller with full details and copies of the complaint, communication, or request;

9.7.2. such assistance as is reasonably requested by the Data Controller to enable the Data Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

9.7.3. the Data Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

9.7.4. assistance as requested by the Data Controller following any Data Loss Event;

9.7.5. assistance as requested by the Data Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Data Controller with the Information Commissioner's Office.

9.8. The Data Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Data Processor employs fewer than 250 staff, unless:

9.8.1. the Data Controller determines that the processing is not occasional;

9.8.2. the Data Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and

9.8.3. the Data Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

9.9. The Data Processor shall allow for audits of its Data Processing activity by the Data Controller or the Data Controller's designated auditor.

 

9.10. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.

9.11. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Data Processor must:

9.11.1. notify the Data Controller in writing of the intended Sub-processor and processing;

9.11.2. obtain the written consent of the Data Controller or general written authorisation. In the case of general written authorisation, the processor shall inform the controller of any intended changes concerning the addition or replacement of other processors, thereby giving the controller the opportunity to object to such changes;

9.11.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 9.11 such that they apply to the Sub-processor; and

9.11.4. provide the Data Controller with such information regarding the Sub-processor as the Data Controller may reasonably require.

9.12. The Data Processor shall remain fully liable to the controller for the sub-processor's compliance.

9.13. The Parties may, at any time on not less than 30 Working Days' notice to the other Party, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

9.14. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Parties may on not less than 30 Working Days' notice to the other Party amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## 10. Freedom of Information

10.1. The Service Provider shall comply and shall procure that its employees, subcontractors, and agents comply, in the performance of its obligations under the Agreement, with the Freedom of Information Act 2000, Environmental Information Regulations 2004, Local Government Transparency Code 2015 and any codes of practice (FOI Legislation) in so far as these place obligations upon the Client.

10.2. The Parties agree that except to the extent that information is protected under the Data Protection Legislation the Client has the sole discretion to:

10.2.1. disclose information relating to the Agreement or the Service Provider held by the Client to persons requesting such information in order to comply with its obligations under the FOI Legislation and/or other legislation requiring disclosure (having had due regard to any potential exceptions or exemptions under that legislation);

10.2.2. publish any information relating to the Agreement or the Service Provider in order to comply with its obligations under the FOI Legislation and/or other legislation requiring publication (having had due regard to any potential exceptions or exemptions under that legislation); and

10.2.3. disclose any information required in order to comply with a Court order.

10.3. The Service Provider shall not do anything to cause any infringement by the Client of their statutory obligations to disclose and publish information including the obligations under the FOI Legislation and shall facilitate the Clients compliance and comply with any reasonable request from the Client for that purpose.

## 11. Intellectual Property Rights

11.1. All Intellectual Property Rights in the Online System and Online Knowledge Base belong to the Service Provider and the Client will not acquire any rights or title thereto, other than the rights specifically granted to them under this Agreement.

11.2. All computer programmes, specifications, databases, source code, object code or other materials comprising the website along with all text, graphics, logos, photographs, images or other material featured, displayed or used on the Online System website that has been developed by the Service Provider will remain the sole property of the Service Provider.

11.3. The Service Provider will not acquire any rights or title to the Intellectual Property Rights of the Client's Data except that the Service Provider will have an irrevocable right to receive hold and use the Client's Data to derive the Reports, provide technical support, monitor performance, and to produce and share statistical reports and analysis.

11.4. The Service Provider confirms that it has all the rights in relation to the provision of the Online System and the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

11.5. The Service Provider shall indemnify the Client against all reasonable loss, damage, costs, and expenses for which the Client is or becomes liable as a result of any infringement or alleged infringement by the Service Provider of any third party's Intellectual Property Rights owned by a third party.

11.6. The Client confirms that it has all the rights in relation to the Data added to the Online System that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

 

11.7. The Client shall indemnify the Service Provider against all loss, damage, costs, and expenses for which the Service Provider is or becomes liable as a result of any infringement or alleged infringement by the Client of any third party's Intellectual Property Rights owned by a third party.

## 12. Equal Opportunities

12.1. The Service Provider shall in performing the Services comply with the Equality Act 2010 and all other anti-discrimination legislation in force now or in the future.

## 13. Health and Safety

13.1. Both Parties have a duty of care under the Health and Safety at Work etc. Act 1974 for the health, safety, and welfare of employees and/or other people that may be affected by either Parties activities or acts of omission.

## 14. Insurance

14.1. The Service Provider shall maintain the following comprehensive Insurance(s);

14.1.1. public and products liability insurance with a level of cover of not less than £5m in respect of any one claim or series of claims arising out of any one act or occurrence or series of acts or occurrences in any one year;

14.1.2. employer's liability insurance with a level of cover to comply with statutory requirements; and

14.1.3. professional indemnity insurance with a minimum level of £1m cover in respect of any one act or occurrence or series of acts or occurrences in any one year such insurance to be maintained for a period of at least six years from the date of expiry or termination of the Agreement.

14.2. The Service Provider shall promptly produce to the Authorised Officer satisfactory evidence of such insurance including payment of premiums when reasonably required.

## 15. Limitation of Liability

15.1. Nothing in this agreement shall operate to exclude or limit either party's liability for:

15.1.1. death or personal injury caused by its negligence; or

15.1.2. any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

15.1.3. fraud; or

15.1.4. the deliberate default or wilful misconduct of that party, its employees, agents, or subcontractors; or

15.1.5. any other liability which cannot be excluded or limited under applicable law.

15.2. Neither Party shall be liable to the other for any loss of profit, anticipated profits, revenues, anticipated savings, goodwill, or business opportunity, or for any indirect or consequential loss or damage.

15.3. Subject to clause 15.1, each Party's aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with this agreement or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed the total charges as defined in the Schedule of Charges.

15.4. The Service Provider will have no liability to the Client whatsoever in respect of any liabilities incurred or suffered by the Client arising from:

15.4.1. any breach of Clause 5 by the Client;

15.4.2. any inaccurate or incorrectly formatted Data that is input into the Online System by the Client;

15.4.3. the interpretation and analysis of the Reports by the Client and reports or advice given thereon;

15.4.4. the loss by the Client of their usernames or passwords;

15.4.5. any unauthorised access to the Online System by any person;

15.4.6. any viruses introduced into the Online System as a result of the inputting of the Data.

15.5. Neither party shall be liable to the other for any indirect or consequential loss the other may suffer even if the loss is reasonably foreseeable or either party has been advised of the possibility of the loss being incurred.

## 16. Termination

16.1. Either Party may immediately terminate this Agreement on giving notice to the other party if:

16.1.1. the other Party commits any breach of these terms and conditions and fails to remedy the breach within 30 days following receipt of a notice from the other Party giving details of the breach and requiring its remedy; or

16.1.2. the other Party passes a resolution for winding up, a court of competent jurisdiction makes an order for winding up or a petition is presented for the winding up of the other Party; or

16.1.3. an administration order is made in relation to the other Party, or a receiver is appointed or an encumbrance takes possession of the assets of the other Party; or

16.1.4. the other Party makes an arrangement or composition with its creditors generally or makes an application to a court of competent jurisdiction for protection of creditors generally.

16.2. Either Party is entitled at any time to terminate this Agreement and recover from the other Party the amount of any loss, resulting from the cancellation if either Party:

16.2.1. commits a material breach of its obligations under the Agreement which is not capable of remedy;

16.2.2. commits a remediable material breach of its obligations under the Agreement, or, persistent or a series of recurrent breach of any of its obligations under the Agreement which the Party has failed to remedy within the period notified by the other Party;

16.2.3. becomes bankrupt, or makes a composition or arrangement with its creditors, or has a proposal for voluntary arrangements for a composition of debts, or scheme or arrangements for a composition of debts, or a scheme or arrangement approved in accordance with the Insolvency Act 1986;

16.2.4. has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrator or an administrative receiver;

16.2.5. has a winding-up order made, or (except for the purpose of amalgamation or reconstruction) a resolution for voluntary winding-up passed;

16.2.6. has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;

16.2.7. has an administrator or administrative receiver, as defined in the Insolvency Act 1986, appointed;

16.2.8. has possession taken, by or on behalf of the holders of any debentures secured by a floating charge, or any property comprised in, or subject to, the floating charge;

16.2.9. is in circumstances which entitle a court or a creditor to appoint, or have appointed, a receiver, a manager, an administrator, or administrative receiver, or which entitle the court to make a winding-up order;

16.2.10. has made a material misrepresentation during the course of negotiating the arrangements set out in this Agreement.

16.3. The Client is entitled at any time to terminate this Agreement and recover from the Service Provider the amount of any loss, resulting from the cancellation if the Service Provider shall have offered, or given, or agreed to give to any person any gift, or consideration of any kind as an inducement or reward for doing, or forbearing to do, or having done or forborne to do any action in relation to entering into the Agreement, or any other contract with the Client, or for showing or forbearing to show favour, or disfavour, to any person in relation to the Agreement, or any other contract with the Client, or if the like acts shall have been done by any person employed by the Service Provider, or acting on the Services Provider's behalf (whether with or without the knowledge of the Services Provider) or if in relation to the Agreement, or any other contract with the Client, the Service Provider or any other person employed by the Service Provider, or acting on the Service Provider's behalf, shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward to any member or officer of the Client, the receipt of which is an offence under Sub Section (2) of Section 117 of the Local Government Act 1972 or Bribery Act 2010;

16.4. In the event of termination of the Agreement:

16.4.1. The Client will cease to be under any obligation to make further payment until the costs, loss or damage resulting from or arising out of the termination shall have been calculated, and only then provided such calculation shows a sum or sums due in favour of the Service Provider;

16.4.2. The Service Provider will cease to be under any obligation to provide the Online System or Services until the costs, loss or damage resulting from or arising out of the termination shall have been calculated, and only then provided such calculation shows a sum or sums due in favour of the Client;

16.4.3. The Client will be entitled to employ and pay other persons to carry out and complete the Services or any part thereof;

16.4.4. The Service Provider shall upon expiry or termination, and within 30 days, deliver up to the Client, information, data, and records held on the Database which is related to the Client's use of the Online System. The Service Provider shall provide such information, data, and records in Excel format (or such other format agreed in advance between the Parties) and via secure email (or by an alternative secure electronic process agreed in advance between the Parties).

16.5. Termination of this Contract for whatever reason will not affect:

16.5.1. the accrued rights and liabilities of the parties arising in any way out of this Contract as at the date of termination;

16.5.2. provisions expressed to survive this Contract that will remain in full force and effect;

## 17. Force Majeure

17.1. Neither party shall be deemed to be in breach of this Contract or otherwise liable to the other party for any delay in performance or any non-performance of any obligations under this Contract (and the time for performance shall be extended accordingly) if and to the extent that the delay or non-performance is due to an event or circumstance of force majeure.

17.2. The party relying on the clause 17.1 shall promptly notify the other party of the nature and extent of the circumstances giving rise to the event of force majeure.

17.3. If the event of force majeure in question prevails for a continuous period in excess of four months after the date on which it began the other party may give notice to the party terminating this Contract. The notice to terminate must specify the termination date which must be not less than 30 days after the date on which the notice to terminate is given. Neither party shall have any liability to the other in respect of termination of this Contract due to an event of force majeure, but rights and liabilities that have accrued prior to termination shall not be affected.

## 18. Disagreement and Dispute Procedures

18.1. Both Parties shall use their reasonable endeavours to resolve any dispute between them in relation to the operation of this Agreement in the course of the day-to-day liaison.

18.2. Disputes which cannot be resolved in accordance with Clause 18.1 should in the first instance be addressed by a special meeting between the Authorised Officers of both Parties who, in conjunction with other designated senior officers of the Parties, shall use their reasonable endeavours to reach a solution to any such dispute within a period of 14 Working Days of the date of the meeting or within such other timeframe agreed between the Parties.

18.3. Where a dispute is not resolved under Clause 18.2, the aggrieved Party shall be entitled to refer the matter to the Centre of Dispute Resolution, 100 St Paul's Churchyard, London EC4M 8BU ("CEDR").

18.4. The Parties agree to cooperate fully and promptly and in good faith with the CEDR including but not limited to allowing access to any documentation relating to the Agreement and the obligations of the Parties under the Agreement.

## 19. Waiver

19.1. A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

19.2. 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 prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## 20. Authorised Officers

20.1. The Client shall from time to time appoint an Authorised Officer who shall have the authority to act on behalf of Client for all purposes connected with the Agreement.

20.2. The Service Provider shall nominate an Authorised Officer who shall have the authority to act on behalf of the Service Provider for all purposes connected with the Agreement which will include but not limited to:

20.2.1. Managing the Agreement;

20.2.2. Attending meetings with the Authorised Officer to review the performance of any obligations under the Agreement;

20.2.3. Providing all information and documentation reasonably required by the Client in respect of the Service Providers obligations under the Agreement.

20.3. The Parties shall promptly notify each other in writing of the name and contact details of the person they appoint as Authorised Officer.

## 21. No Partnership

21.1. This Agreement shall not create any partnership or joint venture between the Client and the Service Provider, nor any relationship of principal and agent, nor authorise any Party to make or enter into any commitments for or on behalf of the other Party.

## 22. Severability

22.1. If any provision of the is Agreement is found to be invalid, illegal, or unenforceable by a court of competent jurisdiction such provision shall be severed from it and the remainder of the provisions of this Agreement shall otherwise remain in full force and effect.

## 23. Third Party Rights

23.1. A person who is not a Party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of this Agreement.

## 24. Assignment and Subletting

24.1. The Client, except as otherwise expressly provided for in this Agreement shall not assign or sub-let its rights or obligations under this Agreement or any part thereof, without the prior written consent of the Service Provider. No sub-letting (if consent is given) on the part of either Party exempts them in any respect form its liability or obligation to the other Party under this Agreement.

## 25. Amendments

25.1. The Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by the Authorised Officers of the Parties.

## 26. Notices

26.1. All notices required by or relating to this Agreement shall be in writing and shall be sent by e-mail to the Parties at their respective addresses as specified at Clause 26.2 below or to such other address as may be notified in writing from time to time. All notices shall be deemed duly given immediately when the notice is transmitted unless they are not delivered or transmitted on a Working Day in which case they will be deemed to have been received on next Working Day.

26.2. For the purposes of Clause 27.1 the address of each Party shall be:

26.2.1. For the Client:
**[insert email address]**

26.2.2. For the Service Provider:
finance@frontlinedata.co.uk

## 27. Entire Agreement

27.1. This Agreement constitutes the entire understanding between the Parties relating to the subject matter of the Agreement and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations, or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either Party.

## 28. Governing Law

28.1. This Agreement shall be governed by and construed in accordance with English Law. In respect of any dispute under or arising out of the Agreement, the Client and the Service Provider thereby agree to submit to the jurisdiction of the English Courts.

## 29. Compliance with Laws

29.1. Both Parties will:

29.1.1. not unlawfully discriminate directly or indirectly by way of victimisation or harassment within the meaning of any law, enactment, order, regulation or other similar instrument relating to discrimination in employment (whether in relation to race, age, gender, religion, disability, sexual orientation or otherwise); and

 

29.1.2. comply with all relevant anti-discrimination legislation, have proper regard to any relevant codes of practice and treat people fairly and equally.

29.1.3. at all times have a written equalities policy which shall as a minimum cover race, age, gender, religion, disability, sexual orientation and provide a copy of the same on request.

29.1.4. not treat a person less favourably than another on grounds of trade union membership or trade union activities, in contravention of The Employment Relations Act 1999 (Blacklists) Regulations 2010).

29.1.5. on request, provide such written evidence as reasonably required that they have not breached this clause 30.

29.2. The Service Provider recognises that the Client is bound to comply with the Human Rights Act 1998 ("HRA") and that those duties imposed on it under the HRA must be met in the delivery of the Services. As a result, the Service Provider shall comply with the provisions of the HRA as if it were a public authority (as defined under the HRA).

 