Kerv Experience Limited
Terms & Conditions for Genesys Cloud Services

1. Interpretation

The definitions and rules of interpretation in this condition apply in these terms and conditions.

1.1 Definitions:

Applicable Laws: all applicable laws, statutes, regulations and codes from time to time in force including but not limited to the Telecommunications Act 1984 and the Communications Act 2003 and any directions given by the Secretary of State, the Director General, Ofcom or any other competent person or authority which govern the use and operation of a telecommunications system;

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 8.30 am to 6.00 pm on any Business Day.

Commencement Date: the date on which the Ramp Period ends or as otherwise stated in the Services Order Form;

Confidential Information: has the meaning given in condition 14 (Confidentiality).

Contract: the Services Order Form and the Supplier's acceptance of it under condition 3.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Customer: the person, firm or company who purchases Services from the Supplier.

Customer's Equipment: the information technology and communication systems, including networks, hardware, software and interfaces owned by, or licensed to, the Customer, its affiliates, or any of its or their agents or contractors, and any other equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the use of the Services including any such items specified in the Services Order Form;

Data Protection Legislation:

(a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of Personal Data.

(b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Customer or Provider is subject, which relates to the protection of personal data.

Domestic Law: the law of the United Kingdom or a part of the United Kingdom.

Equipment: any equipment supplied by the Supplier pursuant to clause 9 and as set out in the Services Order Form;

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

EU Law: the law of the European Union or any member state of the European Union.

Genesys Cloud End User Agreement: the terms that govern the Customer's access to and use of the Genesys Cloud Services as set out in Schedule 1;

Genesys Subscription Term: the period commencing on the date on which the Ramp Period ends;

Group Companies:

Initial Period: the initial period for which the Services are to be provided, as set out in the Services Order Form as the Contract Term, commencing on the Commencement Date;

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, trade names, rights in domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, 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.

Overage: any licences, subscriptions or users in excess of the quantity stated in the Services Order Form, or any increase in the cost of the provision of services (e.g. support services) resulting from the excess contracted number of licenses, subscriptions or users.

Ramp Period: as defined in the Genesys Cloud End User Agreement and set out in the Services Order Form;

Services: the services to be provided by the Supplier under the Contract;

Services Order Form: the form produced by the Supplier containing details of the Services to be provided pursuant to the Contract and subject to these terms and conditions;

Supplier: Kerv Experience Limited, company number 03925996 registered in England and whose registered office is at 1 Finsbury Avenue, London, EC2M 2PF

Support Services terms: the Support Services terms set out at https://kerv.com/kerv-experience/support-services/

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: value added tax imposed by the Value Added Tax Act 1994 or any similar tax chargeable in the UK.

1.2 Condition, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.8 A reference to **writing** or **written** includes email.

1.9 References to conditions and Schedules are to the conditions and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.10 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Application of conditions

2.1 These conditions shall:

(a) apply to and be incorporated in the Contract;

(b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Services Order Form, any proposal, or statement of work, or implied by law, trade custom, practice or course of dealing; and

(c) incorporate the Genesys Cloud End User Agreement, and the terms of any other third party services set out in the Schedules.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

3. Effect of Services Order Form

3.1 The Services Order Form constitutes an offer by the Supplier to provide the Services specified in it on these conditions. Accordingly, the execution and return of the of the Services Order Form by the Customer, or the Supplier's commencement or execution of work pursuant to the Services Order Form, shall establish a contract for the supply and purchase of those Services on these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the Services Order Form shall not govern the Contract.

4. Commencement and Duration

4.1 Services shall be provided for the Initial Period and unless the Supplier has received at least 90 days prior notice in writing, shall continue thereafter for consecutive periods of 12 months until or unless terminated by either party in accordance with clause 17 or the Supplier has received at least 90 days prior notice of termination from the Customer, such notice expiring on the anniversary of the expiry of the Initial Period.

4.2 In addition to the Customer's right to terminate pursuant to clause 4.1, the Customer may terminate the Contract at any time upon giving at least 90 days written notice to the Supplier and provided that:

(a) the Customer shall pay to the Supplier within 30 days of the Supplier's invoice for the same, all outstanding charges incurred by the Customer up to and including the date of termination together with the following cancellation charges:

(i) an amount equivalent to the average of the monthly call charges and Overage charges, for each month and part thereof of the Contract term remaining; and

(ii) an amount equivalent to the total of the charges, other than call charges and Overage charges, that would have been payable by the Customer during the remainder of the Initial Period.

5. Supplier's obligations

5.1 The Supplier shall provide the Services with reasonable skill and care.

5.2 The Supplier shall use reasonable endeavours to meet any performance dates agreed between the parties, but any such dates shall be estimates only and time shall not be of the essence.

5.3 The Supplier shall use reasonable endeavours to ensure that the Services are available for use by the Customer in accordance with the Support Services terms.

6. Customer's obligations

6.1 The Customer shall:

(a) co-operate with the Supplier in all matters relating to the Services;

(b) provide in a timely manner such information as the Supplier may reasonably request, and ensure that such information is accurate in all material respects;

(c) ensure that it has all third party consents, licences and rights required in order to allow the Supplier and it's sub-contractors to provide the Services; and

(d) be responsible (at its own cost) for preparing the relevant premises and Customer's Equipment for the supply of the Services.

6.2 The Customer shall use the Services in accordance with the terms of the Contract, any conditions notified in writing to the Customer by the Supplier from time to time and in accordance with all Applicable Laws.

6.3 The Customer shall ensure that the Services are not used:

(a) for the transmission of any material which is intended as a hoax, for fraudulent purposes, or which is slanderous, offensive, abusive, obscene or of menacing nature or otherwise illegal;

(b) by any third parties without the consent of the Customer; and

(c) in a manner which constitutes a violation or infringement of the rights of any person.

6.4 The Services include the archiving and retrieval of eligible communications made to and from the Customer. The Services provide the Customer with the ability to manage the retention period for recordings and access the recordings via Application Programming Interface (API) in order to retrieve and locally archive them. The Customer must use the API to take all necessary backup copies of such recorded materials in order to meet its requirements and obligations. The retention periods for analytics, data and recordings are set out at *https://help.mypurecloud.com/articles/retention-period-for-analytics-data-and-recording/*. Accordingly, the Supplier shall not be liable for the loss of any recorded materials where the Customer has failed to back up the same.

6.5 If the Services include the provision of telephone lines and numbers, then in the event that the Customer ceases to obtain such Services from the Supplier and migrates these Services to a third party, the Customer shall ensure that any transfer or migration of Services or porting of telephone numbers is effected by such third party on the correct date. The Customer shall be responsible for any charges that may apply when porting numbers away from the Supplier. The costs of such telephone lines and numbers shall remain payable by the Customer to the Supplier for the remainder of the Contract term.

6.6 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, subcontractors or employees, the Customer shall in all circumstances be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it, subject to the Supplier confirming such costs, charges and losses to the Customer in writing. Such losses shall include, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere.

7. Non Solicitation

7.1 Neither party shall, without the prior written consent of the other, at any time from the date of the Contract to the expiry of twelve months after the completion of the Contract, solicit or entice away from a party or employ or attempt to employ any person who is, or has been, engaged as an employee or subcontractor of such party. Neither party shall be in breach of this condition 7 if it

hires an employee or subcontractor of the other as a result of a recruitment campaign not specifically targeted to any employees or subcontractors of the other party.

7.2 Any consent given by a party in accordance with condition 7 shall be subject to the other party paying to the first party on demand a sum equivalent to 25% of the then current annual remuneration of the first party's employee or subcontractor or, if higher, 25% of the annual remuneration to be paid by the other party to such employee or subcontractor.

7.3 If either party commits any breach of Clause 7.1, the breaching party shall, on demand, pay to the claiming party a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor plus the recruitment costs incurred by the claiming party in replacing such person.

8. Customer's Equipment

8.1 The Customer shall ensure that at all times:

(a) the Customer's Equipment shall be in good working order;

(b) the Customer shall comply with and the Customer's Equipment shall conform to Applicable Laws; and

(c) the security and operation of the equipment and Customer's Equipment connected to and used in conjunction with the Services shall be in accordance with best security practice to prevent unauthorised, fraudulent or illegal use of the Services.

8.2 The Customer shall implement any recommendations of the Supplier, it's agents, subcontractors and employees regarding any work to be carried out on the Customer's Equipment or premises necessary for the provision of the Services.

8.3 The Supplier shall have no liability for and 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 the Customer's breach of any of clauses 6.1 to 6.5 and clause 8.1.

9. Equipment

9.1 The Services Order Form shall specify any Equipment that the Customer is obtaining from the Supplier alongside the provision of the Services.

9.2 The Supplier shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer of Equipment to the Supplier.

9.3 The Supplier shall use its reasonable endeavours to deliver the Equipment on the date or dates specified in the Services Order Form, but any such date is approximate only. Time is not of the essence as to the delivery of the Equipment and the Supplier is not in any circumstances liable for any delay in delivery, however caused.

10. Change control

10.1 If either party requests a change to the scope or execution of the Services agreed between the parties, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:

(a) the likely time required to implement the change;

(b) any variations to the Supplier's charges arising from the change;

(c) the likely effect of the change on the Services; and

(d) any other impact of the change on the terms of the Contract.

10.2 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 in writing on the necessary variations to its charges, and any other relevant terms of the Contract to take account of the change.

11. Prices, Charges and payment

11.1 The Customer shall pay all call charges associated with the Service at the rates set out in the Suppliers standard price list from time to time, a copy of which is available at https://kerv.com/kerv-experience/enterprise-rate-card/, unless otherwise agreed in the Services Order Form. The Supplier may vary the call charges to reflect the current standard price list by giving the Customer at least 30 days' notice of such variation before such prices apply.

11.2 The Customer shall be responsible for any charges that may apply when porting numbers to the Supplier.

11.3 The Services Order Form shall specify if any deposit or third party guarantee is required, which must be provided prior to the commencement of the Services.

11.4 The Supplier reserves the right to charge the Customer for all costs incurred as a result of carrying out any maintenance or repair work to the Services which result from actions or omissions of the Customer.

11.5 The prices for the Services, other than call rates, shall be reviewed at the end of the Initial Period and each automatic renewal period to reflect the current standard price list and any changes will be notified to the Customer at least 30 days before such prices apply. If the Customer does not agree to the variation in prices it may terminate the Contract by giving at least 30 days written

notice to the Supplier, provided that such notice expires at least 30 days after the end of the Initial Period or subsequent period.

11.6 Unless otherwise stated in the Services Order Form, the Supplier shall invoice the Customer on a monthly basis in arrears for call charges and Overage charges and in advance for all other recurring charges including the costs of Genesys Europe B.V. subscriptions.

11.7 The Supplier shall calculate the charges by reference to data recorded or logged by its systems which shall be binding on the Customer, except in the case of errors or omissions.

11.8 All payments made by the Customer under this agreement are exclusive of VAT. The Supplier shall provide the Customer with a valid VAT invoice. The Customer shall pay any stamp duties or similar transfer taxes imposed on the supplies made under this agreement and shall reimburse the Supplier for any such stamp duties or similar transfer taxes paid by the Supplier. If the Customer is required to make any deduction for or on account of tax from any payment due under this agreement (**Tax Deduction**):

(a) the Customer shall account to the relevant tax authority for such Tax Deduction and shall provide evidence to the Supplier that it has so accounted.

(b) the amount of the payment due under this agreement shall be increased so that the Supplier receives an amount equal to the amount that would have been received by it, had the Customer not been required to make any Tax Deduction.

The Customer and the Supplier shall co-operate to minimise the amount of any Tax Deduction. If following the making of a Tax Deduction, the Supplier determines acting in good faith that it (or any member of the Supplier's group) has received and retained any credit, relief or other benefit as a result of the Tax Deduction, the Supplier shall pay such amount to the Customer as the Supplier determines acting in good faith would leave the Supplier in the same position as if the Customer had not been required to make any Tax Deduction.

11.9 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on the due date the Supplier may:

(a) charge interest on such sum from the due date for payment at the annual rate specified by the Late Payment of Commercial Debts (interest) Act 1998 from time to time, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and

(b) suspend all Services until payment has been made in full.

11.10 Time for payment shall be of the essence of the Contract.

11.11 The Customer shall pay each invoice submitted to it by the Supplier in full, and in cleared funds, within 30 days of receipt. Payment must be made by variable direct debit or bank transfer from a bank or building society account of the Customer, unless otherwise agreed in writing.

11.12 All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

11.13 All amounts due under this agreement shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

12. Suspension of Services

The Supplier shall, on giving reasonable notice, or where this is not possible, such notice as is reasonable in the circumstances, be entitled to suspend the Services or any part thereof without liability to the Customer in the following circumstances:

(a) emergency maintenance;

(b) any obligation to comply with a regulatory change;

(c) any obligation to comply with an order, instruction or request of a court, government, agency, emergency service or other authority requiring the suspension of the Services;

(d) the Supplier's reasonable belief that the Customer's use of the Services has the potential to damage or disrupt the proper function of the Supplier's infrastructure/equipment used to provide service to other customers;

(e) the Customer's material breach of its obligations under this agreement;

(f) where an undisputed invoice (or undisputed part of an invoice) is not paid in full by the due date, provided that the Supplier has provided at least 5 working days' notice of such non-payment; and

(g) where the Supplier reasonably suspects any fraudulent or unauthorised use of the Services.

13. Intellectual Property Rights

13.1 All Intellectual Property Rights and all other rights in the Services, as between the parties shall be owned by the Supplier.

13.2 The Supplier (or it's licensor) licenses all such rights to the Customer free of charge and on a non-exclusive, non-transferable and worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Services as is envisaged by the parties. If the Supplier terminates the Contract under condition 17.1, this licence will automatically terminate.

14. Confidentiality and Supplier's property

14.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of this agreement in connection with the proposed and actual provision of the Services to the Customer, including but not limited to:

(a) the terms of this agreement or any agreement entered into in connection with this agreement;

(b) any information that would be regarded as confidential by a reasonable business person relating to:

(i) the business, assets, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and

(ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and

(c) any information developed by the parties in the course of carrying out this agreement.

Representatives means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

14.2 The provisions of this clause shall not apply to any Confidential Information that:

(a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);

(b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;

(c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or

(d) the parties agree in writing is not confidential or may be disclosed; or

(e) is developed by or for the receiving party independently of the information disclosed by the disclosing party.

14.3 Each party shall keep the other party's Confidential Information secret and confidential and shall not:

(a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this agreement (**Permitted Purpose**); or

(b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this condition 14.

14.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

(a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and

(b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.

14.5 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 9.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

14.6 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party, or to be implied from this agreement.

14.7 On termination or expiry of this agreement, each party shall:

(a) destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;

(b) erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and

(c) certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party, subject to clause 17 (Termination).

14.8 Except as expressly stated in this agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

14.9 The provisions of this clause 14 shall continue to apply after termination or expiry of this agreement.

15. Data Protection

15.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 15.1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

15.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. Schedule 2 sets out 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.

15.3 Without prejudice to the generality of clause 15.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful collection of the Personal Data by the Supplier on behalf of the Customer for the duration and purposes of this agreement.

15.4 Without prejudice to the generality of clause 15.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

(a) process that Personal Data only on for the purposes of providing the Services or as set out in the documented written instructions of the Customer unless the Supplier is required by Domestic Law or EU Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law or EU Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Domestic Law or EU Law unless the Domestic Law or EU Law prohibits the Supplier from so notifying the Customer;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, 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 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);

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

(d) not transfer any Personal Data outside of the UK or EEA unless the prior consent of the Customer has been obtained and the following conditions are fulfilled:

(i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

(ii) the data subject has enforceable rights and effective legal remedies;

(iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

(e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;

(g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Domestic Law or EU Law to store the Personal Data; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this clause 15 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

15.5 The Customer consents to the Provider appointing the Provider's Group Companies, Genesys Europe B.V. and the third party service providers engaged to provide the Services a list of whom is set out at *https://kerv.com/kerv-experience/subprocessors* as third-party processors of Personal Data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 15 and in either case which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation.

15.6 In addition to the above and when relevant to the delivery of Services, the Supplier confirms that they are a PCI DSS Level 1 Third Party Service Provider and agree to maintain compliance to the Payment Card Industry Data Security Standard for the duration of the Contract Term. Whilst doing so, the Supplier commits to the following:

(a) to provide a valid Attestation of Compliance for the payments related Services being provided to the Customer;

(b) to take responsibility for the security of the Customers payment card account data whilst within the Suppliers control;

(c) to provide documentation showing which PCI DSS Requirements that the Provider is responsible for, which the Customer is responsible for, and which are shared.

16. Limitation of liability

16.1 The following provisions set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:

(a) any breach of the Contract however arising;

(b) any use made by the Customer of the Services, or any part of them; and

(c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

16.2 All warranties, conditions and other terms implied by statute or common law are, to the greatest extent permitted by law, excluded from the Contract.

16.3 Nothing in these conditions excludes the liability of the Supplier:

(a) for death or personal injury caused by the Supplier's negligence; or

(b) for fraud or fraudulent misrepresentation.

16.4 Subject to condition 16.2 and condition 16.3:

(a) the Supplier shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty however arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:

(i) loss of profits; or

(ii) loss of business; or

(iii) depletion of goodwill or similar losses; or

(iv) loss of anticipated savings; or

(v) loss of use; or

(vi) wasted expenditure; or

(vii) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

(b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty however arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the higher of:

(i) the amount actually received by the Supplier for the provision of the Services in the period of 12 months prior to the date of any claim; and

(ii) in respect of an insured loss, the amount actually received by the Supplier in respect of a claim made pursuant to its insurance.

17. Termination

17.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

(a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

(b) the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

(c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

(d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or 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;

(e) 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;

(f) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

(g) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in 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;

(h) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);

(i) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;

(j) 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;

(k) 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 the other party's assets and such attachment or process is not discharged within 14 days; or

(l) 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 condition 17.1(d) to condition 17.1(k) (inclusive).

17.2 In the event that the Supplier terminates this agreement pursuant to clause 17.1, the Customer shall pay to the Supplier all costs, losses and expenses reasonably incurred by the Supplier as a result of such termination, for example third party costs. The Supplier shall be entitled to retain any deposit or prepayment made by the Customer.

17.3 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

17.4 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

18. Force majeure

18.1 Neither party shall be in breach of this agreement or otherwise liable for any failure or delay in the performance of its obligations if such nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this agreement by giving 30 days written notice to the affected party.

19. Multi-Tiered Dispute Resolution Procedure

19.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (Dispute), then , except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:

(a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Customer Success Manager of the Supplier and the Customer's manager of the Services shall attempt in good faith to resolve the Dispute;

(b) if the Customer Success Manager of the Supplier and the Customer's manager of the Services are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Managing Director of the Supplier and a senior director of the Customer who shall attempt in good faith to resolve it;

(c) if the Managing Director of the Supplier and the senior director of the Customer are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 10 working days of service of the Dispute Notice, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (ADR notice) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR; and

(d) if there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, upon which the parties cannot agree within 10 days from the date of the ADR notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them; and

(e) unless otherwise agreed between the parties, the mediation will start not later than 30 days after the date of the ADR notice.

19.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings but only where the Dispute comprises the non-payment by the Customer of any sum due pursuant to the Contract which has not been reasonably disputed by the Customer.

19.3 If for any reason the Dispute is not resolved within 90 days of commencement of the mediation, the Dispute shall be referred to and finally resolved by the courts of England and Wales.

20. Waiver

20.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

20.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

21. Severance

21.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

21.2 If any provision or part-provision of this agreement is deemed deleted under condition 22.1, the parties shall negotiate in good faith to amend such provision so that, to the greatest extent possible, the amended provision achieves the intended commercial result of the original provision.

22. Entire agreement

22.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

22.2 Each party acknowledges that, in entering into this agreement, it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

22.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

23. Assignment

23.1 Either party may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement, with the prior written consent of the other, such consent not to be unreasonably withheld or delayed.

24. No partnership or agency

24.1 Nothing in the Contract 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).

25. Third party rights

25.1 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

26. Notices

26.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case; or

(b) sent by email to the following email addresses (or an email address substituted in writing by the party to be served):

(i) Supplier: sales.experience@kerv.com

(ii) Customer: the email address of the Customer to which the Supplier submits its invoices.

26.2 Any notice shall be deemed to have been received:

(a) if delivered by hand, at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next working day delivery service, at 1.00 pm on the second Business Day after posting; or

(c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

26.3 This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

27. Governing law

27.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and interpreted in accordance with the law of England and Wales.

28. Jurisdiction

28.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1 GENESYS CLOUD END USER AGREEMENT

The Genesys Cloud Services terms and conditions; Indirect Customers; Genesys Cloud End User Agreement found at: *https://help.mypurecloud.com/articles/global-genesys-cloud-service-terms-and-conditions/*

Schedule 2 Data being Processed

1. Processing by the Supplier
   (a) The scope of the Supplier's processing of data is: the Supplier has access to the Customer's staff data and the Customer's platform containing end user personal data in Genesys Cloud as a result of performing its contractual obligations.
   (b) The nature of the Supplier's processing is: contact and correspondence with the Customer's staff, access to the Customer's end user's data in Genesys Cloud for the purpose of performing it's contractual obligations.
   (c) The purpose of the Supplier's processing is: the provision of the Services.
   (d) The duration of the processing is during the term of the Contract.
2. Types of Personal data being processed: names, contact details, call recordings.
3. Categories of data subjects: the Customer's staff and end users.

Schedule 3 Any Third Party Supplier Terms