



## TERMS AND CONDITIONS

1. DEFINITIONS In these conditions: a. 'Conditions' - these terms and conditions of business as amended from time to time pursuant to clause 18.5 b. 'Provider' or 'us' - Abstrakt Services, Limited, Company number 02232001 79 -81 Chester Street, Aston, Birmingham, B6 4AE c. 'Client' - any person, firm or agent who accepts the services of the Provider d. 'Customer' - any recipient to whom the Provider ships the Goods to. For the avoidance of doubt, the Provider does not have any contract with the Customer e. 'Services' - any services which the Provider is to supply in accordance with the Conditions f. 'Goods' - the goods which are the subject of the Contract which are to be stored and serviced by the Provider at the Client's request g. 'Contract' - any contract for the supply of the Services by the Provider to the Client in accordance with these Conditions h. 'Effective Date' - the date upon which the Provider will become the employer of the Client's Employees under TUPE regulations i. 'Demand' - any action, award, claim or other legal recourse, complaint, cost, debt, demand, expense, fine, liability, loss, outgoing, penalty or proceeding j. 'Provider's Premises' - all the locations that the Provider operates its business from k. 'Force Majeure' - an event beyond the reasonable control of the Provider including but not limited to strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Providers or subcontractors. **Order:** the Client's order for Services as set out in the Customer's order form. **Services:** the services supplied by the Provider to the Client as set out in the Specification. **Specification:** the description or specification of the Services provided in writing by the Client to the Provider.

### 1.2 INTERPRETATION:

(a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

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

(c) A reference to **writing** or **written** includes fax but not email.

## 2. THE CONTRACT

**2.1** The Order constitutes a request by the Client to the Provider to provide Services in accordance with these Conditions.

**2.2** The Order shall only be deemed to be accepted when the Provider issues a written acceptance of the Order at which point and on which date the Contract shall come into existence.

**2.3** The Client warrants that: a. it is either the owner of the Goods or has lawful possession of the Goods and all rights and authority to store them with the Provider and to direct the release and/or delivery of the Goods to Customer; b. the Goods are properly marked and packed for storage and handling; and c. all information provided by Client to Provider is true, accurate, and complete in all material respects.

**2.4** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

## 3. SUPPLY OF SERVICES

**3.1** The Provider shall supply the Services to the Customer in accordance with the Specification in all material respects.

3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Client in any such event.

3.4 The Supplier warrants to the Client that the Services will be provided using reasonable care and skill.

3.5 Quotations and tenders by the Provider are valid for a period of 30 days from the date of quotation unless otherwise stated or agreed in writing.

#### 4. CLIENT 'S OBLIGATIONS

4.1 The Client shall:

- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Client 's premises, office accommodation and other facilities as reasonably required by the Supplier;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) [prepare the Client 's premises for the supply of the Services;]
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Client 's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (i) comply with any additional obligations as set out in the Specification;

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this *Clause 4.2*; and
- (c) the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Client Default.

5. PRICE a. All amounts payable by the Client under the Contract are exclusive of VAT and all other taxes and duties whatsoever which shall be payable by the Client at the applicable rate. b. The Provider shall have the right to increase its prices to the Client: i. with immediate effect to account for any alterations to the Services requested by the Client after the date of the Contract, including material changes to the Goods from that agreed in the Quotation ii. each 1 January in line with the latest published CPI figures for inflation iii. with immediate effect to account for increases in the Provider's costs outside of their control (including but are not limited to costs of postal services, external couriers, pallet networks and raw materials) iv. by giving one month's notice in writing for any other reason. If such increase is not acceptable to the Client, it may cancel the Contract within the notice period herein by giving the Provider the agreed notice in writing, as per the agreed contract notice period. During this period any changes will not be in effect. b. For the avoidance of doubt, no Insurance for

the Goods of any kind (including but not limited to insurance for consequential losses) is included in the price unless agreed by the Provider in writing.

6. PAYMENT a. Where credit has been agreed invoices are payable in full, without discount of any kind, within 14 days of the invoice date unless otherwise agreed in writing. b. Where no credit has been agreed: invoices are payable immediately and/or a deposit may be required in advance. c. The Provider reserves the right, from time to time, to reassess or withdraw any credit extended to the Client if it has reason to believe the Client is no longer creditworthy. d. All payments must be made by Direct Debit or with agreement from the Provider by electronic bank transfer. The Provider may make an administration charge and charge for any additional costs incurred in processing payments not made as above. e. All payments to the Provider must be in Pounds Sterling. f. The Client will not be entitled to make any deduction or claim any set-off or withhold payment on any invoices. g. The Provider reserves the right to charge costs and interest on late payments as set out in the Late Payment of Commercial Debts (Interest) Act 1998. h. Where any invoice is over 30 days late, the Provider reserves the right to instruct a third party agency, or begin court action, to collect all outstanding amounts in which case any

fees or costs incurred will be billed to the Client in addition to the Late Payment of Commercial Debts interest and costs.

7. LIEN a. The Provider shall have on the Goods a particular lien as well as a general lien entitling it to retain the Goods as security for payment of all sums owed (whether due or not) from the Client on any account, whether directly relating to the Goods or not. Storage charges the normal rates shall accrue on any Goods detained under a lien. The Provider may enforce this lien in accordance with Section 14(d) below, including, by selling all or any part of the Goods in accordance with applicable law. b. The Client must continue to insure the Goods whilst under lien and the Provider will take no additional responsibility for damage or loss other than already set out in the Contract.

8. CLIENT UNDERTAKINGS The Client undertakes to: a. present the Goods for packing in such condition as not to cause damage or injury, or the likelihood of damage or injury, to the property, employees or agents of the Provider or to the Customer; b. obtain any necessary import licences or permits necessary for the entry of the Goods into the territories in which they are to be shipped, and their delivery to the Provider; c. be responsible for any customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation and delivery of the Goods; d. comply with all laws and regulations affecting the manufacture, sale, packaging and labelling of the Goods from time to time in force; e. ensure that all the Goods presented have been appropriately tested and approved as safe for all purposes for which the Goods are intended to be used; f. inform the Provider in writing before the presentation of the Goods of any special precautions required by the nature, weight or condition of the Goods and any laws and regulations specific to the Goods with which the Provider will need to comply when storing, handling or shipping the Goods; g. provide to the Provider with copies of all material safety data sheets relating to the Goods where they exist; h. perform the additional undertakings as detailed in the Provider's most recently published Service Level Agreement; i. provide all necessary information to allow international customs clearance for Goods to be exported including but not limited to cost prices, sale prices, HS codes, customs descriptions, instructions, documents, licences, authorisations and permissions; j. be solely responsible for obtaining any necessary import licences or permits; and k. shall ensure that the bill of lading or other contract of carriage (i) identifies the Client as the named consignee, in care of the Provider, and (ii) does not identify the Provider as the consignee. If any Goods are shipped to the Provider naming Provider as named consignee, the Client shall promptly notify the carrier in writing that Provider is (i) the "in care of party" only and (ii) does not have any beneficial title or interest in the Goods. The Provider may refuse to accept any Goods tendered for storage in violation of this provision, and shall not be liable for any loss or damage to, or misconsignment of, such Goods. Whether the Provider accepts or refuses goods shipped in violation of this Section, the Client agrees to indemnify and hold Provider harmless from all claims for transportation, storage,

handling and other charges relating to such goods, including surcharges, undercharges, rail demurrage, truck/intermodal detention and other charges of any nature whatsoever, in each case excepting charges that the Provider explicitly has agreed to undertake in writing.

9. TUPE a. The parties agree that the Contract may constitute a relevant transfer for the purposes of TUPE. Where relevant the contract will be made pursuant to TUPE with effect from the Effective Date; b. For any employees who are transferred, the Client will pay to the Provider an amount equal to the redundancy pay which would have been payable to the Employees as of the Effective date, had they been made redundant;

Undertakings (where the Client is the direct employer of the Employees)

c. The Client undertakes to the Provider: i. that it has complied with, and shall up to and including the Effective Date, comply with all of its obligations due to or in connection with the Employees; ii. that it has paid and shall pay all sums due to or in relation to the Employees up to and including the Effective Date, including but not limited to all salaries, bonus, commission, expenses, holiday pay, NI, pension, taxation and other sums payable in respect of any period up to the Effective Date; iii. that it has complied and shall comply in all respects with its obligations under TUPE regulations, and that it has provided and shall provide to the Provider such information as the Provider may request in order to verify such

compliance iv. that there are no sums owing to or from any Employee other than reimbursement of expenses for the current period and wages for the current salary period; v. that all employments, engagements and agreements relevant to the transfer have been fully disclosed; vi. that it shall not alter (whether to take effect before, on or after the Effective Date) any of the terms of employment or engagement of any of the Employees (without the prior written consent of the Provider); Indemnities (where the Client is the direct employer of the Employees, or if a 3rd party is the employer)

The Client undertakes to the Provider to fully indemnify and hold the Provider harmless against all Demands (including legal and other professional fees and expenses) which the Provider may incur, arising from: i. any failure by the Client to comply with its obligations in law; ii. the employment of the Employees or the termination of their employment by the previous employer; iii. any failure by the Client to comply with its legal obligations; iv. the transfer to the Provider, by virtue of TUPE, of the employment of any employee related to the Service other than the Employees; v. any act or omission before the Effective Date which, by virtue of TUPE, is deemed to be an act or omission of the Provider; or

vi. without prejudice to the other provisions of this clause, the Client shall, at its expense, give the Provider such assistance as the Provider may reasonably require to contest any Demand by any person employed before the Effective Date in connection with this agreement, subject always to the Client's obligations under the DPA 1998.

#### Warranties

b. The Client has not offered, promised or agreed to, nor is aware of, any future variation in any contract of employment of any one of the Employees or any other person in respect of whom liability is deemed by TUPE to pass to the Provider, and no negotiations for an increase in the remuneration or benefits of any Employee are current or likely to take place within the period of six months after Completion. c. The Client is not engaged, involved or aware of any enquiry, investigation, dispute, claim or legal proceedings (whether arising under contract, common law, statute or equity) with any of the Employees or any other person currently or previously employed by or engaged in the Business or their dependants and, so far as the Client is aware, there is no event which could give rise to such enquiry, investigation, dispute, claim or proceedings.

#### With respect to labour relations

Where relevant, the Client has Disclosed all collective bargaining, procedural or other

agreements or arrangements (whether in writing, oral or by custom and practice and whether binding or not) in existence relating to or relevant to any of the Employees.

10. DELIVERY & PERFORMANCE a. Goods shall be deemed delivered to the Customer (and therefore no longer the responsibility of the Provider) when they are accepted by either the Client, an agent of the Client, the Customer or any carrier (who shall be the Client's agent irrespective of who pays the carrier's charges). The Provider will use all reasonable endeavours to package and have the Goods ready for despatch by any date quoted by the Provider or requested by the Client or their agents, but time shall not be of the essence of the Contract b. The Provider shall not be liable for any penalty, loss, injury, damage, costs or expense arising from any delay or failure in delivery or performance from any cause whatsoever c. If the Client, their agents, or the Customer, fail to take delivery of the Goods or any part of them at the agreed time and date, or fail to provide documents or written instructions required to enable the Goods to be delivered, then the Client shall pay the Provider on demand for all costs and expenses incurred by the Provider including storage and charges arising from its failure d. The Provider has the right not to accept any deliveries of Goods or components that the Client has not previously advised of, including, without limitation, if the Goods tendered by the Client do not conform to the description, as provided on the Quotation or otherwise agreed in writing by the Provider e. The Provider has the right to refuse delivery of any Goods or components that it deems unsafe or not in a suitable condition for storage or packing.

11. ONLINE SYSTEMS & REPORTING a. The Provider will, subject to scheduled maintenance time, use its reasonable endeavours to ensure that order API is available at all times, and will take all reasonable precautions to ensure uptime is maintained, however uptime of the API is not guaranteed. The Client must therefore ensure that if the API is not available, any data requests will be stored by the Client and resubmitted later b. The Provider will, subject to scheduled maintenance time, use its reasonable endeavours to ensure that the Client's web portal is accessible at all times c. While the Provider will use its reasonable endeavours to ensure data is correctly displayed on the Client's web portal, it makes no warranty whatsoever in relation to the accuracy of such data. The Provider will not be held liable for any loss, delay or other costs resulting from decisions made by the Client on the basis of any data or report d. The Provider will endeavour to adhere to modern web standards as set out by the World Wide Web Consortium (W3C). It is the Client's responsibility to ensure that the Client or its agents use a compatible browser, including support for, but not limited to; html, xml, css, ECMA script (javascript), canvas and PDF. The Provider takes no responsibility and will offer no refund if the Client is unable to access or use data or reports due to the use of incompatible software.

**12. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

**12.1** The limits and exclusions in this clause reflect the insurance cover the Provider has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

**12.2** Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

**12.3** (i) Subject to *Clause 12.2*, the Provider's total liability to the Client shall be limited to the Goods lost, mis-delivered or damaged and, where only part of the Goods are lost mis-delivered or damaged, irrespective of whether such losses affect the total value of the Goods and shall not exceed:

- (a) £100.00 per tonne
- (b) the cost of replacing, repairing or re-conditioning the Goods; or
- (c) the value of the Goods lost, mis-delivered or damaged

whichever of (a), (b) and (c) is the lower.

(ii) The Provider's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract

(iii) If the Client requires the value set out in 12.3(a) above to be increased such will be considered by the Provider on a case by case basis provided that a request is made in writing not less than 7 days before the commencement of transit required setting out the reasons for the request and the amount per tonne required by the Client. Nothing in this clause 12.3(iii) shall oblige the Client to increase the sum of £100.00 per tonne and any increase will only be valid if the Provider has notified the Client in writing confirming the amount of the limitation per tonne not later than 2 working days prior to the commencement of transit.

**12.4** This *Clause 12.3* sets out specific heads of excluded loss:

(a) Subject to *Clause 12.2*, the types of loss listed in *Clause 12.3(c)* are wholly excluded by the parties.

(b) If any loss falls into one or more of the categories in *Clause 12.3(c)* and also falls into a category, or is specified, in *Clause 12.3(d)*, then it is not excluded.

(c) The following types of loss are wholly excluded:

- (i) Loss of profits
- (ii) Loss of sales or business.
- (iii) Loss of agreements or contracts.
- (iv) Loss of anticipated savings.
- (v) Loss of use or corruption of software, data or information.
- (vi) Loss of or damage to goodwill.
- (vii) Indirect or consequential loss.

(d) The following types of loss and specific loss are not excluded:

(i) Sums paid by the Client to the Provider pursuant to the Contract, in respect of any Goods or Services not provided in accordance with the Contract.

(ii) Wasted expenditure

(iii) Additional costs of procuring and implementing replacements for, or alternatives to, Goods or Services not provided in accordance with the Contract. These include consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials.

(iv) Losses incurred by the Client arising out of or in connection with any third party claim against the Client which has been caused by the act or omission of the Provider. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by subcontractors, the Provider's personnel, regulators and clients of the Client.

**12.5** The Provider has given commitments as to compliance of the Services with relevant specifications in *Clause 3*. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

**12.6** Unless the Client notifies the Provider that it intends to make a claim in respect of an event within the notice period, the Provider shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of [the event having occurred and shall expire 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

**12.7** This *Clause 8* shall survive termination of the Contract.

**13. CLAIMS** a. The Provider will not, under any circumstances, be liable to the Client unless the Client notifies the Provider of any potential claim under the Contract giving full details of the potential claim including any details required by the Provider: i. for claims covered by the Provider's Compensation Policy, within the time scales set out in that policy (which the Client confirms they have read and understood), ii. for all other claims, within 14 days of the potential claim coming to the Client's knowledge and in any case no later than 90 days from its occurrence. The Provider shall have reasonable time to investigate the claim and respond.

#### **14. TERMINATION**

**14.1** Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 3 months' written notice.

**14.2** Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 21 days of that party being notified in writing to do so;

(b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business [or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction];

(c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

**14.3** Without affecting any other right or remedy available to it, the Provider may terminate the Contract with immediate effect by giving written notice to the Client if:

(a) the Client fails to pay any amount due under the Contract on the due date for payment; or

(b) there is a change of control of the Client.

**14.4** Without affecting any other right or remedy available to it, the Provider may suspend the supply of Services under the Contract or any other contract between the Client and the Provider if the Client fails to pay any amount due under the Contract on the due date for payment, the Client becomes subject to any of the events listed in *Clause 9.2(b)* to *Clause 9.2(d)*, or the Provider reasonably believes that the Client is about to become subject to any of them.

#### **15. CONSEQUENCES OF TERMINATION**

**15.1** On termination of the Contract:

(a) the Client shall immediately pay to the Provider all of the Provider's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Provider shall submit an invoice, which shall be payable by the Client immediately on receipt;

(b) the Client shall return all of the Provider Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then the Provider may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

**15.2** Termination [or expiry] of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

**15.3** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination [or expiry] of the Contract shall remain in full force and effect.

## **16. CONFIDENTIALITY**

Each party undertakes that it shall not at any time during the Contract, and for a period of 5 years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by this clause. Each party may disclose the other party's confidential information: a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 16; and b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. No party shall use any other party's confidential information for any purpose other than to perform its obligations under the Contract. This clause 16 shall not apply to any information which: i. is already known to the receiving party at the time of disclosure by the disclosing party; ii. is in or comes into the public domain through no fault of the receiving party; iii. is obtained by the receiving party from a third party who has the legal right to make the disclosure to the receiving party or iv. is independently developed by the receiving party without reference to or reliance on the disclosing party's confidential information.

## **17. DATA PROTECTION AND DATA PROCESSING**

**17.1** Both parties will comply with all applicable requirements of the Data Protection Legislation. This *Clause 17* is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this *Clause 17*, **Applicable Laws** means (for so long as and to the extent that they apply to the Provider) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means any Data Protection Legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.

**17.2** The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and the Provider is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

**17.3** Without prejudice to the generality of *Clause 17.1*, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to the Provider for the duration and purposes of the Contract.

**17.4** Without prejudice to the generality of *Clause 17.1*, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under the Contract:

(a) process that Personal Data only on the written instructions of the Client unless the Provider is required by Applicable Laws to otherwise process that Personal Data. Where the Provider is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Provider shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Client;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, 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 European Economic Area unless the prior written consent of the Client has

been obtained and the following conditions are fulfilled:

- (i) the Client or the Provider has provided appropriate safeguards in relation to the transfer;
- (ii) the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
- (iii) the Provider 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 Provider complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- (e) assist the Client, at the Client'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 Client without undue delay on becoming aware of a Personal Data breach;]
- (g) [at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and]
- (h) [maintain complete and accurate records and information to demonstrate its compliance with this *Clause 17*.

**17.5** The Client does not consent to the Provider appointing any third party processor of Personal Data under the Contract.

**17.6** Either party may, at any time on not less than 30 days' notice, revise this *Clause 17* 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 replaced by attachment to the Contract).  
client

c. Where the Services are required by the client to be provided outside of the EEA, data which is specifically required for the provision of those Services will be transferred to the non-EEA country. Such permitted transfers will be safeguarded by the Provider through Model Contract Clauses or other adequate safeguards. The Provider's liability is as defined in this contract, save that nothing within the contract relieves the processor of its own direct responsibilities and liabilities under the GDPR.

## **18. GENERAL**

**18.1 Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

### **18.2 Assignment and other dealings.**

- (a) The Provider 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 the Contract.
- (b) The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract [without the prior written consent of the Provider].

### **18.3 Confidentiality.**

(a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, Clients, clients or provider s of the other party, except as permitted by *Clause 18.3(b)*.

(b) Each party may disclose the other party's confidential information:

- (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this *Clause 18.3*; and

- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.



#### **18.4 Entire agreement.**

(a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party acknowledges that in entering into the Contract 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 the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

**18.5 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**18.6 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract 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 the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**18.7 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

#### **18.8 Notices.**

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be 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);

(b) Any notice or communication shall be deemed to have been received:

(i) if delivered by hand, on signature of a delivery receipt [or at the time the notice is left at the proper address; and

(ii) if sent by pre-paid first-class post or other the next working day delivery service, at 9.00 am on the second Business Day after posting [or at the time recorded by the delivery service

(c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

#### **18.9 Third party rights.**

(a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

(b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**18.10 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

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