

Control Descent Limited
Terms and Conditions of Business

Introduction

These Terms and Conditions of Business (“**Conditions**”) shall be read alongside our Proposal and/or any Event Specification agreed by us, which together form a legally-binding contract between you and us, concerning the provision of Services (Proposal, Event Specification and Services being as defined below) and any additional or related services provided from time to time by us. In accepting any Proposal or the provision of Services, the Customer shall be deemed to have fully accepted these Conditions, whether or not they have signed them as part of a formal written contract with us.

1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Affiliate means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;

Applicable Law means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national;

Business Day means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;

Conditions means the Supplier’s terms and conditions of supply set out in this document;

Confidential Information means any commercial, financial or technical information, information relating to the Services, plans, financial information, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;

Contract means the agreement between the Supplier and the Customer for the supply and purchase of Services incorporating these Conditions and the Order and including all their respective schedules, attachments and annexures;

Control has the meaning given to it in section 1124 of the Corporation Tax Act 2010 and **Controls, Controlled** and **under common Control** shall be construed accordingly;

Controller shall have the meaning given to it in applicable Data Protection Laws from time to time;

Customer means the named party in the Contract which has agreed to purchase the Services from the Supplier and whose details are set out in the Order;

Data Protection Laws means, as binding on either party or the Services:

- (a) the GDPR;
- (b) the Data Protection Act 2018;
- (c) any laws which implement any such laws; and any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;

Data Protection Supervisory Authority means any regulator, authority or body responsible for administering Data Protection Laws, being in the United Kingdom, the Information Commissioner’s Office (ICO);

Data Subject shall have the meaning given to it in applicable Data Protection Laws from time to time;

Documentation means any descriptions, instructions, manuals, literature, technical details or other related materials included in any event management plan, as supplied in connection with the Services;

Event means the event as described in and confirmed by the Order, including the Location, date(s) and applicable times for delivery;

Event Specification means the particular and agreed requirements of the Event and the Services as set out or referred to in the Contract;

Force Majeure means an event or sequence of events beyond a party’s reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, Government instruction, pandemic, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving the Supplier’s or its suppliers’ workforce, but excluding the Customer’s inability to pay or circumstances resulting in the Customer’s inability to pay;

GDPR means the General Data Protection Regulation, Regulation (EU 2016/679) as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further modified or amended by the laws of the United Kingdom or a part of the United Kingdom from time to time);

Intellectual Property Rights means all rights in the nature of intellectual property, including without limitation, copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in software, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case:

- (a) whether registered or not;
- (b) including any applications to protect or register such rights;
- (c) including all renewals and extensions of such rights or applications;
- (d) whether vested, contingent or future;
- (e) to which the relevant party is or may be entitled, and in whichever part of the world existing;

IPR Claim has the meaning given in clause 10.2;

Location means the address or addresses of the Event for performance of the Services as set out in the Order;

Order means the order for the Services, which may reflect the Event Specification as set out in any Proposal issued by the Supplier, placed by the Customer;

Personal Data shall have the meaning given to it in applicable Data Protection Laws from time to time;

Personal Data Breach shall have the meaning given to it in applicable Data Protection Laws from time to time;

Price has the meaning set out in clause 3.1;

Processing has the meaning given to it in applicable Data Protection Laws from time to time (and related expressions, including **process**, **processing**, **processed**, and **processes** shall be construed accordingly);

Processor shall have the meaning given to it in applicable Data Protection Laws from time to time;

Proposal means a written proposal of the Services which may or may not result in a confirmed Order;

Protected Data means Personal Data received from or on behalf of the Customer in connection with the performance of the Supplier's obligations under the Contract;

Services means the Services set out in the Order and to be performed by the Supplier for the Customer in accordance with the Contract;

Sub-Processor means any agent, sub-contractor or other third party (excluding its employees) engaged by the Supplier for carrying out any processing activities on behalf of the Customer in respect of the Protected Data;

Supplier means Control Descent Limited, a company incorporated and registered in England with company number

09433833, whose registered address is at 28 Alexandra Terrace, Exmouth, Devon EX8 1BD;

Supplier Personnel means all employees, officers, staff, other workers, agents and consultants of the Supplier, its Affiliates and any of their sub-contractors who are engaged in the performance of the Services from time to time; and

VAT means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Services.

1.2 In these Conditions, unless the context requires otherwise:

1.2.1 a reference to the Contract includes these Conditions, the Order, and their respective schedules, appendices and annexes (if any);

1.2.2 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;

1.2.3 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;

1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;

1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;

1.2.6 a reference to a gender includes each other gender;

1.2.7 words in the singular include the plural and vice versa;

1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;

1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;

1.2.10 without prejudice to the provisions of clause 12, a reference to legislation is a reference to that legislation as amended, extended, re-

enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract;

1.2.11 without prejudice to the provisions of clause 12, a reference to legislation includes all subordinate legislation made from time to time under that legislation; and

1.2.12 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

2 Application of these conditions

2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.

2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing.

2.3 No variation of these Conditions or to an Order or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each of the Supplier and the Customer respectively.

2.4 Each Order by the Customer to the Supplier shall be an offer to purchase Services subject to the Contract including these Conditions.

2.5 If the Supplier is unable to accept an Order, it shall notify the Customer in writing as soon as reasonably practicable.

2.6 The offer constituted by an Order shall remain in effect and be capable of being accepted by the Supplier for 10 (ten) Business Days from the date on which the Customer submitted the Order, after which time it shall automatically lapse and be withdrawn.

2.7 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Services shall arise, until the earlier of:

2.7.1 the Supplier's written acceptance of the Order; or

2.7.2 the Supplier performing the Services or notifying the Customer that they are ready to be performed (as the case may be).

2.8 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.

2.9 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply Services and are incapable of being accepted by the Customer.

2.10 The Customer's particular attention is drawn to the following Conditions: condition 4 (payment, including the consequences of late or non-payment), condition 8 (indemnity and insurance) and condition 9 (limitation of liability).

3 Price

3.1 The price for the Services shall be as set out in the Order or, where no such provision is set out, shall be calculated in accordance with the Supplier's scale of charges as applicable at the relevant time (the **Price**).

3.2 The Prices are exclusive of:

3.2.1 insurance, and all other related charges or taxes which shall be charged in addition at the Supplier's standard rates, and

3.2.2 VAT (or equivalent sales tax).

3.3 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.

3.4 The Supplier may increase the Prices at any time by giving the Customer not less than 10 Business Days' notice.

3.5 Notwithstanding clause 3.4, the Supplier may increase the Prices with immediate effect by written notice to the Customer where there is an increase in the direct cost to the Supplier of supplying the relevant Services.

4 Payment

4.1 The Supplier shall invoice the Customer for the Services, partially or in full, at any time following acceptance of the Order.

4.2 The Customer shall pay all invoices:

4.2.1 in full without deduction or set-off, in cleared funds within 5 Business Days of the date of each invoice; and

4.2.2 to the bank account nominated by the Supplier.

- 4.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:
- 4.3.1 the Supplier may, without limiting its other rights, charge interest on such sums at 8% (eight per cent.) a year above the base rate of Lloyds Bank plc from time to time in force, and/or
- 4.3.2 suspend the provision or any part of the provision of the Services; and/or
- 4.3.3 charge interest which shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.
- 5 Customer Obligations**
- On an ongoing basis, the Customer shall co-operate with the Supplier in all matters relating to the Service and the Events, including providing the Supplier with all necessary information and other items that it reasonably requires, promptly, to be able to undertake the Services; the Customer accepts and acknowledges that timely completion will only be achieved where it co-operates fully and in a timely fashion with any requests made by the Supplier in connection with any Services; any failure of the Customer to fully observe the provisions of this condition may result in delivery of the Event not being as expected; the Customer accepts and acknowledges that any delay or inability to deliver the Event, caused by its own actions or omissions, shall not result in a liability of the Supplier, to the extent that any such liabilities, loss(es) or damage arises from those circumstances.
- 6 Performance**
- 6.1 The Services shall be performed by the Supplier at the Event Location on the dates/duration specified in the Order.
- 6.2 The Supplier shall perform the Services with all reasonable skill and care, complying with all usual and expected health and safety requirements as would be expected to apply to a business similar to the Supplier providing services similar to the Services.
- 6.3 The Services shall be deemed performed on completion of the performance of the Services as specified in the Order.
- 6.4 The Supplier shall obtain all necessary consents, permits and licences as necessary in order to perform the Services.
- 6.5 The Supplier shall comply with all applicable laws and regulations concerning the organisation and management of the Event and the related performance of the Services.
- 6.6 The Supplier shall not be liable for any delay in or failure of performance caused by:
- 6.6.1 the Customer's failure to provide the Supplier with adequate instructions for performance or otherwise relating to the Services;
- 6.6.2 Force Majeure.
- 7 Warranty**
- 7.1 The Supplier warrants that, at the time of performance, the Services shall:
- 7.1.1 conform as reasonably as possible in all material respects to their description and the Event Specification;
- 7.1.2 be free from material defects;
- 7.1.3 be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II s 13; and
- 7.1.4 in the case of any media on which any part of the results of the Services are supplied, be free from defects in material and workmanship and of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 7.2 The Customer warrants that it has provided the Supplier with all relevant, full and accurate information as to the Customer's needs and requirements.
- 7.3 The Customer accepts that any indication of the Services contained in the Supplier's advertising or marketing materials are and at the time before the Contract were only issued for the sole purpose of giving an approximate indication of the Services described in them and shall not have contractual force.
- 7.4 As the Customer's sole and exclusive remedy, the Supplier shall, at its option, remedy or refund the Services that do not comply with clause 7.1, provided that:
- 7.4.1 the Customer serves a written notice on the Supplier not later than 5 (five) Business Days from performance in the case of defects discoverable by inspection, or within a reasonable period of time from performance in the case of latent defects; and
- 7.4.2 such notice specifies that some or all of the Services do not comply with clause 7.1 and

- identifies in sufficient detail the nature and extent of the defects; and
- 7.4.3 the Customer gives the Supplier a reasonable opportunity to examine the claim of the defective Services.
- 7.5 The provisions of these Conditions shall apply to any Services that are remedied or re-performed with effect from performance of the remedied or re-performed Services.
- 7.6 Except as set out in this clause 7:
- 7.6.1 the Supplier gives no warranties and makes no representations in relation to the Services; and
- 7.6.2 shall have no liability for their failure to comply with the warranty in clause 7.1, and all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 8 Indemnity and insurance**
- 8.1 The Customer shall indemnify, and keep indemnified, the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier as a result of or in connection with the Customer’s breach of any of the Customer’s obligations under the Contract.
- 8.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under these Conditions. On request, the Customer shall supply, so far as is reasonable, evidence of the maintenance of the insurance and all of its terms from time to time applicable. The Customer shall on request assign to the Supplier the benefit of such insurance.
- 9 Limitation of liability**
- 9.1 The extent of the parties’ liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 9.
- 9.2 Subject to clauses 9.5 and 9.6, the Supplier’s total liability shall not exceed 25% of the total sum in the Order.
- 9.3 Subject to clauses 9.5 and 9.6, the Supplier shall not be liable for consequential, indirect or special losses.
- 9.4 Subject to clauses 9.5 and 9.6, the Supplier shall not be liable for any of the following (whether direct or indirect):
- 9.4.1 loss of profit;
- 9.4.2 loss or corruption of data;
- 9.4.3 loss of use;
- 9.4.4 loss of production;
- 9.4.5 loss of contract;
- 9.4.6 loss of opportunity;
- 9.4.7 loss of savings, discount or rebate (whether actual or anticipated);
- 9.4.8 harm to reputation or loss of goodwill.
- 9.5 The limitations of liability set out in clauses 9.2 to 9.4 shall not apply in respect of any indemnities given by either party under the Contract.
- 9.6 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 9.6.1 death or personal injury caused by negligence;
- 9.6.2 fraud or fraudulent misrepresentation;
- 9.6.3 any other losses which cannot be excluded or limited by Applicable Law;
- 9.6.4 any losses caused by wilful misconduct.
- 10 Intellectual property**
- 10.1 All Intellectual Property Rights in or arising from the provision of the Services shall, subject to any licence granted by the Supplier to the Customer for the use of any item(s) transferred or delivered as part of the Services, vest entirely in the Supplier which will include all preparatory and draft version of any work created.
- 10.2 The Supplier shall indemnify the Customer from and against any losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that performance or benefit of the Services infringes the Intellectual Property Rights of any third party (**IPR Claim**), provided that the Supplier shall have no such liability if the Customer:
- 10.2.1 does not notify the Supplier in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible and in any event within 10 (ten) Business Days;
- 10.2.2 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Supplier;

- 10.2.3 does not let the Supplier at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;
 - 10.2.4 does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim;
 - 10.2.5 does not, at the Supplier's request, provide the Supplier with all reasonable assistance in relation to the IPR Claim (at the Customer's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Customer;
 - 10.2.6 uses the Services in combination with any other goods or services, which without such combination, no IPR Claim could or would have been made.
- 10.3 If any IPR Claim is made or is reasonably likely to be made, the Supplier may at its option:
- 10.3.1 procure for the Customer the right to continue receiving the benefit of the relevant Services; or
 - 10.3.2 modify or replace the infringing part of the Services so as to avoid the infringement or alleged infringement, provided the Services remain in material conformance to their Specification.
- 10.4 The Supplier's obligations under clause 10.2 shall not apply to Services modified or used by the Customer other than in accordance with the Contract or the Supplier's instructions. The Customer shall indemnify the Supplier against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by the Supplier in connection with any claim arising from such modification or use.
- 11 Confidentiality and announcements**
- 11.1 The Customer shall keep confidential all Confidential Information of the Supplier and of its Affiliates and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 11.1.1 any information which was in the public domain at the date of the Contract;
 - 11.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - 11.1.3 any information which is independently developed by the Customer without using information supplied by the Supplier or by any Affiliate of the Supplier; or
 - 11.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract except that the provisions of clauses 11.1.1 to 11.1.3 shall not apply to information to which clause 11.4 relates.
- 11.2 This clause shall remain in force for a period of five years from the date of the Contract and, if longer, three years after termination of the Contract.
- 11.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.
- 11.4 To the extent any Confidential Information is Protected Data (as defined in clause 12) such Confidential Information may be disclosed or used only to the extent such disclosure or use is in compliance with and does not conflict with any of the provisions of clause 12.1.
- 12 Processing of personal data**
- 12.1 The parties agree that the Customer is a Controller and that the Supplier is a Processor for the purposes of processing Protected Data pursuant to the Contract. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure that all instructions given by it to the Supplier in respect of Protected Data (including the terms of the Contract) shall at all times be in accordance with Data Protection Laws. Nothing in the Contract relieves the Customer of any responsibilities or liabilities under any Data Protection Laws.
- 12.2 The Supplier shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of the Contract.
- 12.3 The Customer shall indemnify and keep indemnified the Supplier against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a Data Protection Supervisory

- Authority) arising out of or in connection with any breach by the Customer of its obligations under this clause 12.
- 12.4 The Supplier shall:
- 12.4.1 only process (and shall ensure Supplier Personnel only process) the Protected Data in accordance with the Contract (including when making any transfer to which clause 12.9 relates), except to the extent:
- (a) that alternative processing instructions are agreed between the parties in writing; or
 - (b) otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest); and
- 12.4.2 without prejudice to clause 12.1, if the Supplier believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall promptly inform the Customer and be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.
- 12.5 Taking into account the state of technical development and the nature of processing, the Supplier shall implement and maintain such technical and organisational measures in accordance with the Data Protection Laws, subject to the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the Protected Data to be carried out under or in connection with the Contract, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Protected Data transmitted, stored or otherwise processed. The Supplier shall implement appropriate technical and organisational security measures appropriate to the risk, including as appropriate those matters mentioned in Articles 32(1)(a) to 32(1)(d) (inclusive) of the GDPR to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.
- 12.6 The Supplier shall:
- 12.6.1 not permit any processing of Protected Data by any agent, subcontractor or other third party (except its or its Sub-Processors' own employees in the course of their employment that are subject to an enforceable obligation of confidence with regards to the Protected Data) without the written authorisation of the Customer;
- 12.6.2 prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this clause 12 (including those relating to sufficient guarantees to implement appropriate technical and organisational measures) that is enforceable by the Supplier and ensure each such Sub-Processor complies with all such obligations;
- 12.6.3 remain fully liable to the Customer under the Contract for all the acts and omissions of each Sub-Processor as if they were its own; and
- 12.6.4 ensure that all natural persons authorised by the Supplier or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.
- 12.7 Details of Processing of Protected Data
 This section includes certain details of the Processing of Protected Data as required by Article 28(3) of the GDPR:
Subject matter and duration of the Processing of Company Personal Data
 The subject matter and duration of the Processing of the Protected Data are set out in the Contract.
The nature and purpose of the Processing of Protected Data
 To keep in contact with the Customer and its personnel, to undertake the Services and for accounting and administration.
The types of Protected Data to be Processed
 Those relating to means of communication including name, address, e-mail address and telephone numbers of Data Subjects.
The categories of Data Subject to whom the Protected Data relates

Individuals related to the Customer and those participating in any Events, to include their family members, related contacts and Affiliates.

The obligations and rights of Customer and Customer Affiliates

The obligations and rights of the Customer and any Affiliates are set out in the Contract.

List of Auditors

Any director or officer of the Customer at the relevant time.

- 12.8 The Supplier shall (at the Customer's cost):
- 12.8.1 assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to the Supplier; and
 - 12.8.2 taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.
- 12.9 The Supplier shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the United Kingdom or to any International Organisation, as such term is understood under Data Protection Laws.
- 12.10 The Supplier shall, in accordance with Data Protection Laws, make available to the Customer such information that is in its possession or control as is necessary to demonstrate the Supplier's compliance with the obligations placed on it under this clause 12 and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of one audit request in any 12 month period under this clause 12.10).

- 12.11 At the end of the provision of the Services relating to the processing of Protected Data, at the Customer's cost and the Customer's option, the Supplier shall either return all of the Protected Data to the Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires the Supplier to store such Protected Data. This clause 12 shall survive termination or expiry of the Contract.

13 Force majeure

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such an event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues for a continuous period of more than 90 (ninety) days, either party may terminate the Contract by written notice to the other party.

14 Termination

- 14.1 The Supplier may terminate the Contract or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if:
- 14.1.1 the Customer commits a material breach of Contract and such breach is not remediable;
 - 14.1.2 the Customer commits a material breach of the Contract which is capable of being remedied and such breach is not remedied within 7 days of receiving written notice of such breach;
 - 14.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 14 days after the Supplier has given notification that the payment is overdue; or
 - 14.1.4 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 14.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
- 14.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;

- 14.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;
- 14.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
- 14.2.4 becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
- 14.2.5 becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
- 14.2.6 becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
- 14.2.7 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- 14.2.8 has a resolution passed for its winding up;
- 14.2.9 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- 14.2.10 suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- 14.2.11 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
- 14.2.12 has a freezing order made against it;
- 14.2.13 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
- 14.2.14 is subject to any events or circumstances analogous to those in clauses 14.2.1 to 14.2.13 in any jurisdiction;
- 14.2.15 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 14.2.1 to 14.2.14 including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 14.3 The Supplier may terminate the Contract any time by giving not less than four weeks' notice in writing to the Customer if the Customer undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.
- 14.4 The right of the Supplier to terminate the Contract pursuant to clause 14.2 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to the Contract.
- 14.5 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under this clause 14, it shall immediately notify the Supplier in writing.
- 14.6 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.
- 15 Notices**
- 15.1 Any notice given by a party under these Conditions shall:
- 15.1.1 be in writing and in English;
- 15.1.2 be signed by, or on behalf of, the party giving it; and
- 15.1.3 be sent to the relevant party at the address set out in the Contract
- 15.2 Notices may be given, and are deemed received:
- 15.2.1 by hand: on receipt of a signature at the time of delivery;
- 15.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;
- 15.2.3 by Royal Mail International Tracked post: at 9.00 am on the fourth Business Day after posting; and
- 15.2.4 by email provided confirmation is sent by first class post: on receipt of a delivery and read receipt email from the correct address.
- 15.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 15.1 and shall be effective:
- 15.3.1 on the date specified in the notice as being the date of such change; or
- 15.3.2 if no date is so specified, 5 (five) Business Days after the notice is deemed to be received.
- 15.4 This clause does not apply to notices given in legal proceedings or arbitration.
- 15.5 Any legal proceedings under or in connection with the Contract are not validly served if sent by email.

- 16 Cumulative remedies**
The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.
- 17 Time**
Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.
- 18 Further assurance**
The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.
- 19 Entire agreement**
- 19.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 19.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
- 19.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.
- 20 Variation**
No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, each party.
- 21 Assignment**
- 21.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent, which it may withhold or delay at its absolute discretion.
- 21.2 Notwithstanding clause 21.1, the Customer may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives the Supplier prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Customer acknowledges and agrees that any act or omission of its Affiliate in relation to the Customer's rights or obligations under the Contract shall be deemed to be an act or omission of the Customer itself.
- 22 Set off**
- 22.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which the Supplier has with the Customer.
- 22.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.
- 23 No partnership or agency**
The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.
- 24 Severance**
- 24.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.
- 24.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 25 Waiver**
- 25.1 No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

25.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.

26 Compliance with law

The Customer shall comply with Applicable Law and shall maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

27 Conflicts within contract

If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail to the extent of the conflict.

28 Costs and expenses

The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

29 Third party rights

29.1 Except as expressly provided for in clause 29.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

29.2 Any Affiliate of the Supplier shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

30 Dispute resolution

30.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 30.

30.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.

30.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedure:

30.3.1 Within 5 (five) Business Days of service of the notice, the contract managers of each of the

parties shall meet to discuss the dispute and attempt to resolve it.

30.3.2 If the dispute has not been resolved within 5 (five) Business Days of the first meeting of the contract managers or other representatives, then the matter shall be referred to the chief executives (or persons of equivalent seniority) of each of the parties. The chief executives (or equivalent) shall meet within 5 (five) Business Days to discuss the dispute and attempt to resolve it.

30.4 Either party may issue formal legal proceedings at any time whether or not the steps referred to in clause 30.3 have been completed.

31 Governing law and jurisdiction

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim related to it.

The terms and conditions which apply to and govern this Order are the Conditions. The parties agree that all other terms and conditions are expressly excluded.

The Customer has read and accepts the Order and Contract subject to the Conditions above:

Signed by or on behalf of the Customer

.....

Date.....

Name.....

Position.....

Signed by or on behalf of the Supplier

.....

Date.....

Name.....

Position.....