

General Terms and Conditions ("GTC")

1. Subject Matter and General Provisions

- 1.1 These GTC set out the binding terms and conditions for the provision of the Services by the FitFactory Technology Ltd (the "Provider") to the Customer as further specified in the Commercial Agreement.
- 1.2 By signing the Commercial Agreement to which these GTC are included as a link, the Provider and Customer (also referred to collectively as the "**Parties**" or each individually as a "**Party**") enter into an agreement that shall consist of the Commercial Agreement, GTC, SLA, and the Licensing Terms ("**Agreement**"). The Agreement is entered into as of the Effective Date indicated in the Commercial Agreement.
- 1.3 Where the Agreement refers to a time of day or to public holidays, such reference shall be interpreted as reference to the local time and public holidays at the place of the main establishment of the Provider, unless specified otherwise.

Definitions and interpretation

- 1.4 The following definitions and rules of interpretation apply in this Agreement:
 - 1.4.1 **Authorised Users:** those employees, agents and independent contractors of the Customer who are authorised to use the Services.
 - 1.4.2 **Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
 - 1.4.3 **Change of Control:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression "change of control" shall be construed accordingly.
 - 1.4.4 **Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in Clause 13.
 - 1.4.5 **Customer Data:** the data inputted by the Customer, Authorised Users or the Provider on the Customer's behalf for the purposes of using the Services.
 - 1.4.6 **Cybersecurity Requirements:** any applicable laws, regulations or statutory codes or statutory guidance relating to the security of network and information systems and security breach and incident reporting requirements.
 - 1.4.7 **Good Industry Practice:** the exercise of that degree of skill, care, prudence, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
 - 1.4.8 **Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in design, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future or in any part of the world.
 - 1.4.9 **Known Vulnerability:** any Vulnerability that has either:
 - 1.4.9.1 been assigned a Common Vulnerabilities and Exposure (CVE) number;
 - 1.4.9.2 been disclosed on the National Vulnerability Database available at the website operated by the US National Institute of Standards and Technology (NIST) from time to time; or
 - 1.4.9.3 been disclosed on the internet, or any open public database, such that it would be revealed by reasonable searches conducted in accordance with Good Industry Practice.
 - 1.4.10 **Latent Vulnerability:** any instances of typical classes of Vulnerability, including without limitation buffer overflows, cross-site scripting (XSS) and Structure Query Language (SQL) injection.
 - 1.4.11 **Subscription Fees:** the subscription fees payable by the Customer to the Provider for the User Subscriptions, as set out in the Commercial Agreement.
 - 1.4.12 **User Subscriptions:** the user subscriptions purchased by the Customer pursuant to Clause 3 which entitle Authorised Users to access and use the Services in accordance with this Agreement.
 - 1.4.13 **Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data (whether by re-arranging,

altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.4.14 **Vulnerability:** a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity or availability of data.

- 1.5 A reference to a statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.6 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.7 The headings in this Agreement are inserted for convenience only and do not affect the interpretation of this Agreement.

2. Provider obligations

- 2.1 The Provider confirms that it has all the rights in relation to the Services that are necessary to grant all the rights that it purports to grant under, and in accordance with, the terms of this Agreement.
- 2.2 The Provider may, as its own discretion, make changes to the Services, provided that the modified functionalities or quality are not materially adversely affected by such modifications. Additionally, the Provider reserves the right to make changes to the Services as far as such changes are necessary for the Provider to comply with applicable laws; if such changes materially affect the Customer, the Provider will inform the Customer reasonably in advance of any such changes.
- 2.3 The Provider may subcontract its obligations under this Agreement. The Provider shall remain fully responsible for any and all such subcontracted obligations, and for the acts and omissions of its subcontractors.
- 2.4 This Agreement does not prevent the Provider from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 2.5 The Provider is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays, and other problems inherent in the use of such communications facilities.
- 2.6 The Provider will maintain all necessary licences, consents and permissions necessary for the performance of its obligations under this Agreement.
- 2.7 The Provider shall perform the Services with reasonable skill and care. This obligation shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to any of the Provider's instructions, or modification or alteration of the Services by any party other than the Provider or the Provider's duly authorised contractors or agents. If the Services are not provided with reasonable skill and care, the Provider will, at its own expense, use commercially reasonable endeavours to correct any non-conformances. Such correction constitutes the Customer's sole and exclusive remedy for any breach of this Clause 2.7.
- 2.8 The Provider does not warrant that:
- 2.8.1 the Customer's use of the Services will be uninterrupted or error-free;
 - 2.8.2 the Services and/or the information obtained by the Customer via the Services will meet the Customer's requirements;
 - 2.8.3 the Services will be free from Vulnerabilities or Viruses; or
 - 2.8.4 the Services will comply with any Cybersecurity Requirements.

3. User subscriptions

- 3.1 Subject to Clauses 3.2 and 3.3, the Customer may, from time to time during the Initial Term or any Renewal Term, purchase additional User Subscriptions in excess of the initial number set out in the Commercial Agreement and the Provider shall grant access to the Services to such additional Authorised Users in accordance with the provisions of this Agreement.
- 3.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Provider in writing and the Provider shall activate the additional User Subscriptions within 5 days of the Customer's request.
- 3.3 The Customer shall, within 30 days of the date of the Provider's invoice, pay to the Provider the relevant fees for such additional User Subscriptions as set out in the Commercial Agreement. If such additional User Subscriptions are purchased by the Customer part way through the Initial Term or any Renewal Term (as applicable), such fees shall be pro-rated from the date of activation by the Provider for the remainder of the Initial Term or Renewal Term (as applicable).

4. Intellectual Property

- 4.1 The Customer acknowledges and agrees that the Provider (and its licensors, where applicable) own all rights, title and interest, including all Intellectual Property Rights, in and to the systems, software and other content and materials used in the provision of the Services, other than the Customer Data. All rights not expressly granted to Customer are reserved to Provider and its licensors (if any). Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services.
- 4.2 If the Provider is notified by a third party or an owner of Intellectual Property Rights that the Customer entered or uploaded data into the Services claiming that such data infringes its rights or if the Provider otherwise becomes aware of any such claim, the Provider may investigate the allegation and determine in good faith and in its reasonable discretion whether such data should be removed from the Services. The data may be removed only (a) when required by law, or (b) if the Provider reasonably determines it is necessary to protect the interests of the third party against continued infringement (and the Provider against any liability) that cannot be prevented by temporarily suspending access to the Services with as much reasonable prior notice as the circumstances permit. In no event, shall such removal of data give rise to any liability of the Provider or its licensors (if any) to the Customer for a refund or damages, or impose any obligation on the Provider for continuing to provide the Services for use with such data.

5. Customer Responsibilities

- 5.1 The Customer shall:
- 5.1.1 fulfil the specific obligations designated as prerequisites in the Agreement;
 - 5.1.2 fulfil the obligations imposed on it in this Agreement in a timely and efficient manner. In the event of any delays by the Customer, the Provider may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - 5.1.3 provide the Provider with all necessary co-operation in relation to this Agreement, including the provision of or access to such information as may be required by the Provider;
 - 5.1.4 obtain and maintain all necessary licenses, consents and permissions necessary for the Provider, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
 - 5.1.5 ensure that its network and systems comply with the relevant specifications set out in the Agreement (as may be updated by the Provider from time to time);
 - 5.1.6 to, the extent permitted by law and except as expressly provided in this Agreement, be solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Provider's data centres, and all problems, delays, conditions, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet; and
 - 5.1.7 without affecting its other obligations under this Agreement, comply with all applicable laws and regulations relating to its activities under this Agreement.
- 5.2 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, accuracy, integrity and quality of all such Customer Data.
- 5.3 The Customer shall be responsible for the acts and omissions of its users as if they were the acts and omissions of the Customer, and for ensuring that anyone who uses the Services in the Customer's name does so in accordance with this Agreement.
- 5.4 Unless as explicitly agreed as part of a Service, the Customer shall be solely responsible for backups of Customer Data entered into or uploaded to any Service.
- 5.5 The Customer shall ensure that it will not:
- 5.5.1 distribute or transmit to the Provider, via the Services, any Viruses, Known Vulnerability or Latent Vulnerability. If the Customer learns or suspects that it or its Authorised Users have introduced any Virus, Known Vulnerability or Latent Vulnerability, the Customer will notify Provider immediately and the Customer will, at its own cost and expense, assist the Provider in mitigating the effects of any Virus, Known Vulnerability or Latent Vulnerability. This does not affect any other rights or remedies of the Provider;
 - 5.5.2 store, access, publish, disseminate, distribute or transmit via the Services any material which:
 - 5.5.2.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 5.5.2.2 facilitates illegal activity;
 - 5.5.2.3 depicts sexually explicit images;
 - 5.5.2.4 promotes unlawful violence;

5.5.2.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation or disability; or

5.5.2.6 is otherwise illegal or causes damage or injury to any person or property;

and the Provider reserves the right, on no less than twenty (20) days' prior written notice to the Customer, such notice specifying the breach of this clause and requiring it to be remedied within the twenty (20) day period, to disable the Customer's access to the Services for the duration of the time that the breach remains unremedied.

5.6 The Customer shall not (except as may be permitted by any applicable law which is incapable of exclusion by agreement by the Parties and except to the extent expressly permitted under this Agreement):

5.6.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services in any form or media or by any means; or

5.6.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services.

5.7 The Customer shall not:

5.7.1 access all or any part of the Services in order to build a product or service which competes with the Services;

5.7.2 use the Services to provide services to third parties;

5.7.3 permit a direct competitor of the Provider to access or use the Services;

5.7.4 subject to Clause 19.11, licence, sell, rent, lease, transfer, assign, distribute, disclose or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users; or

5.7.5 attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided in this Agreement.

5.8 The Customer shall use all reasonable endeavours to prevent unauthorised access to, or use of, the Services and, if there is any unauthorised access or use, promptly notify the Provider.

5.9 The Customer is responsible for all use of the Services, and for ensuring that the Authorised Users do not circumvent or disclose any usernames, passwords or other access credentials or authentication details, or interfere with or disrupt any other security control of the Services.

5.10 If Customer wishes to perform any form of security vulnerability assessments or penetration testing on the Services, this will be subject to the written permission of the Provider at the Provider's sole discretion.

5.11 The Customer's obligations as described in Clause 5 will herein be referred to as "**Customer Responsibilities**".

5.12 The Provider shall not be responsible for defects or delays in performance of the Services due to the Customer's failure to fulfil a Customer Responsibility if and to the extent the Provider's ability to provide the Services is adversely impacted by the Customer's delay or failure to fulfil the Customer Responsibility. The aforementioned delays may include a reasonable ramp-up time to resume performance of the Services after the Customer has remedied its failure to fulfil its Customer Responsibilities.

6. Suspension of Services

6.1 The Provider may suspend access to or use of Services or remove any relevant data from the Services, if

6.1.1 such access or use, or any data:

6.1.1.1 poses a security risk to or may otherwise unduly and adversely impact the Services, or

6.1.1.2 infringes or otherwise violates the rights or other interests of a third party, entails illegal or otherwise prohibited content or activities, or otherwise subjects the Provider to a potential liability; or

6.1.2 the Provider is required to do so under any applicable laws, or any court, governmental or regulatory authority's order.

6.2 Unless prohibited under applicable laws and if reasonable under the circumstances (as determined by the Provider in its sole discretion), the Provider shall provide the Customer with a written notice prior to such suspension or removal, and an opportunity to take steps to avoid any such suspension or removal. Any suspension of the Customer's right to access or use the Services or removal of data shall not release the Customer from any of its obligations under this Agreement if and to the extent the Customer is responsible for the incident resulting in the suspension or removal. For the avoidance of doubt, the Provider's suspension and removal rights are in addition to the Provider's right to terminate this Agreement pursuant to Clause 10 and any other rights and remedies the Provider may have under this Agreement or any applicable laws.

7. Fees and payment

- 7.1 In return for the Services, the Provider shall be entitled to the fees as specified in the Commercial Agreement. All amounts and fees stated or referred to in this Agreement:
- 7.1.1 are payable in pounds sterling;
 - 7.1.2 are, subject to Clause 7.8 (Service Cancellation Policy), non-cancellable and non-refundable; and
 - 7.1.3 unless stated otherwise, are exclusive of value added tax, which shall be added to the Provider's invoice at the appropriate rate.
- 7.2 The Customer will provide any information reasonably requested by Provider to determine whether Provider is obliged to collect VAT from the Customer, including the Customer's VAT number. If the Customer is entitled to an exemption from any relevant taxes, the Customer is responsible for providing the Provider with the respective tax exemption certificates. The Provider will apply the tax exemption certificates to charges occurring after the date the Provider receives the tax exemption certificates.
- 7.3 If any deduction or withholding is required by applicable law, the Customer will notify the Provider and will pay any additional amounts necessary to ensure that the net amount that Provider receives after any deduction and withholding equals the amount the Provider would have received if no deduction or withholding had been required. The Customer will provide the Provider with documentation showing that the withheld and deducted amounts have been paid to the relevant taxation authority.
- 7.4 All amounts payable under this Agreement will be made without set-off or counterclaim, and without any deduction or withholding, unless such counterclaims have been established by a final and conclusive court judgement, have been asserted before a court and are ready for decision or are undisputed.
- 7.5 Invoices are due and payable within 30 days following the receipt of that invoice. Invoices shall be sent to the address specified in the Commercial Agreement.
- 7.6 If the Provider has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Provider:
- 7.6.1 the Provider may, on no less than 5 Business Days' notice to the Customer and without liability to the Customer, disable the Customer's and its Authorised Users' access to all or any part of the Services and the Provider shall not be required to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - 7.6.2 interest shall accrue on a daily basis on such due amounts at an amount equal to 4% over the then current Bank of England base rate, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 7.7 The Provider may reasonably adjust any of its fees without the Customer's approval. Such increase shall take effect no earlier than the first anniversary of the Effective Date and thereafter on each subsequent anniversary.
- 7.8 **Service Cancellation Policy** (Training and Professional Services) Fitfactory schedules dedicated consultant time and prepares in advance for all customer-facing services. Late cancellations may result in unrecoverable costs and limit our ability to reassign resources. This policy helps ensure fair use of our services and continued delivery quality. Where the Customer cancels or postpones any scheduled Training or Professional Services, the following cancellation charges shall apply, calculated by reference to the notice period provided prior to the first scheduled day of delivery:
- a) Less than three (3) Business Days' notice: 100% of the first day or session fee shall be payable.
 - b) Less than seven (7) Business Days' notice: 50% of the first day or session fee shall be payable.
 - c) More than seven (7) Business Days' notice: No cancellation charge shall apply.
- Cancellation charges shall apply irrespective of whether the cancelled service is subsequently rescheduled, unless otherwise agreed in writing by the Provider.
- 7.9 **Subscription Commencement and Billing:** Unless otherwise expressly agreed in writing, Subscription Fees shall become payable from the earlier of:
- a) the date on which the Subscription Services go live and are made available for use by the Customer; or
 - b) sixty (60) days following receipt by the Provider of a valid Purchase Order for the relevant Subscription Services.
- The Provider may, acting reasonably and in good faith, extend the commencement date for Subscription Fees where implementation, onboarding, or go-live is delayed. Any such extension shall be at the Provider's discretion and shall not constitute a waiver of the Provider's right to commence billing, nor create any obligation to grant further extensions.
- 8. Support**
- 8.1 Additional Services may include support services for specific Services. Such support services will be performed subject to the following:

- 8.1.1 the Provider will be available for support services only on supported days during supported hours, as set out in the SLA; and
- 8.1.2 the Provider may resolve the Customer's issues in any reasonable way that the Provider sees fit, and in accordance with the SLA.

9. Acceptance Procedure

- 9.1 The Services are accepted by Customer upon performance of the Service by Provider. Where the Provider and Customer make an exception to this rule and explicitly agree in writing that a Service requires acceptance, the following procedure shall apply:
- 9.2 Once the Provider deems a Service complete, the Provider will give written notice to the Customer (e-mail shall suffice) that the Service is ready for acceptance testing (hereinafter "RFA Notice");
- 9.3 Upon receipt of the RFA Notice, the Customer will begin the acceptance test, which shall be completed within two (2) weeks of receipt of the RFA Notice, unless the Parties have agreed another time period in writing (e-mail shall suffice). The Customer may only refuse acceptance if the Service has defects that either prevent the overall usage of the Service or significantly affect the use of the Service. The Customer may only refuse acceptance if the Customer at the same time provides a written and detailed record of all defects detected;
- 9.4 If the Customer does not refuse acceptance and provides the aforementioned record within two (2) weeks of receipt of the RFA Notice or if the Customer declines acceptance without being entitled to do so, the Service will be deemed accepted; and
- 9.5 If the Service contains minor defects (i.e., defects based on which the Customer is not entitled to decline acceptance), the Provider will use commercially reasonable endeavours to correct such defects in coordination with the Customer

10. Term and Termination

- 10.1 The Agreement shall enter into force as of the Effective Date and shall be valid for the Initial Term and will subsequently be renewed for Renewal Terms (each as designated in the Commercial Agreement) until termination by either Party.
- 10.2 Either Party can terminate the Agreement without cause by providing 3 months' notice in writing before the end of the Initial Term or any Renewal Term, in which case this Agreement shall terminate upon the expiry of the Initial Term or the relevant Renewal Term.
- 10.3 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by notice in writing to the other Party if:
 - 10.3.1 the other Party fails to pay any amount due under this Agreement on the due date for payment and remains in default no less than 14 days after being notified in writing to make such payment;
 - 10.3.2 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;
 - 10.3.3 the other Party suspends or ceases, or threatens to suspend or cease carrying on all or a substantial part of its business;
 - 10.3.4 the other Party takes any step or action in connection with it entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for obtaining a moratorium under Part A1 of the Insolvency Act 1986, 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);
 - 10.3.5 the other Party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.
- 10.4 The Provider may terminate the Agreement immediately by notice in writing if:
 - 10.4.1 the Customer refuses to accept a Change Offer proposed by the Provider according to Clause 11.3 and the Provider cannot reasonably be expected to continue performance under the Agreement without the Change Offer taking effect; or
 - 10.4.2 there is a Change of Control of the Customer.
- 10.5 On termination of this Agreement for any reason:
 - 10.5.1 all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services;
 - 10.5.2 each Party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other Party;

- 10.5.3 the Provider may destroy or otherwise dispose of any Customer Data in its possession (including back-ups, if any) unless the Provider receives, no later than 10 days after the date of termination of this Agreement, a written request for the delivery of the Customer Data in the Provider's possession. The Provider shall use commercially reasonable endeavours to deliver such Customer Data (including back-ups, if any) to the Customer within 30 days of receipt of written request, provided that the Customer has paid all fees and charges outstanding and resulting from termination. The Customer shall pay all reasonable expenses incurred by the Provider in returning or disposing of Customer Data. If the Agreement has been terminated due to the Customer's breach of this Agreement, the Provider may invoice the Customer in advance for its expected costs and expenses for returning any Customer Data in its possession and the Customer will pay such invoice in advance of the Provider returning any Customer Data; and
- 10.5.4 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 shall not be affected or prejudiced.

11. Change Procedure

- 11.1 The Customer may propose a change to the Services or to the terms of the Agreement ("**Change Request**"). A Change Request must be submitted to the Provider in accordance with Clause 17.1 and contain sufficient information to enable the Provider to reasonably evaluate the Change Request.
- 11.2 The Provider will inform the Customer if and under which conditions the change may be implemented (including information on resources, costs, and on possible further impacts on the Services). The Provider will provide this information in the form of a written offer for an amendment to the Commercial Agreement (hereinafter "**Change Offer**").
- 11.3 The Provider may propose changes via a Change Offer without the Customer first proposing a Change Request if the Provider deems the proposed changes necessary for the continued provision of the Services to the Customer.
- 11.4 After receipt of a Change Offer, the Customer will review the Change Offer without undue delay (and in any event, within 10 Business Days from receipt of the Change Offer) and will inform the Provider of its refusal or acceptance of the Change Offer. If the Customer refuses to accept the Change Offer, the Agreement will remain unchanged, and the Provider will continue to provide the Services in accordance with the current terms and conditions of the Agreement. The Change Offer shall be deemed accepted if the Customer does not refuse such Change Offer within 10 Business Days from receipt of the Change Offer. An accepted Change Offer shall apply from the date of acceptance or deemed acceptance, as the case may be.

12. Data Processing

Where the Provider processes personal data on behalf of the Customer, the terms of the Data Processing Agreement shall apply. All personal data collected, processed, and used under this Agreement shall be subject to the Data Processing Agreement.

13. Confidentiality

- 13.1 "**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/or that Party's Representatives, whether before or after the date of this Agreement, in connection with this Agreement, including but not limited to:
- 13.1.1 the existence and terms of this Agreement (or any agreement entered into in connection with this Agreement);
 - 13.1.2 any information developed by the Parties in the course of carrying out this Agreement and the Parties agree that:
 - 13.1.2.1 details of the Services, and the results of any performance tests of the Services, shall constitute the Confidential Information of the Provider; and
 - 13.1.2.2 Customer Data shall constitute the Customer's Confidential Information; and
 - 13.1.3 any information that would be regarded as confidential by a reasonable business person relating to:
 - 13.1.3.1 the business, assets, affairs, customers, clients, suppliers, 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
 - 13.1.3.2 the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or any member of the group of companies to which the disclosing party belongs).
- "**Representatives**" means, in relation to a Party, its employees, officers, contractors, subcontractors, representatives and advisers.
- 13.2 Confidential Information does not include information which:
- 13.2.1 is or becomes generally available to the public otherwise than as a direct or indirect result of disclosure by the receiving Party or its Representatives contrary to their respective obligations of confidentiality; or

- 13.2.2 is or was made available or becomes available to the receiving Party otherwise than pursuant to this Agreement and free of any restrictions as to its use or disclosure.
- 13.3 Each Party may disclose the other Party's Confidential Information to Representatives who have a need to know it for the purpose of fulfilling the respective Party's obligations under this Agreement and are legally bound to protect the Confidential Information on terms no less protective than the terms of this Agreement.
- 13.4 Each Party shall keep confidential the other Party's Confidential Information, and shall not:
- 13.4.1 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
 - 13.4.2 disclose such Confidential Information in whole or in part to any third party, save as expressly permitted by this Clause 13.
- 13.5 The receiving Party will not be considered to have breached its obligations under this Clause 13 for disclosing Confidential Information of the disclosing Party to the extent required to satisfy any legal requirement of a competent governmental or regulatory authority, provided that promptly upon receiving any such request and to the extent that it may legally do so, the receiving Party:
- 13.5.1 advises the disclosing Party prior to making such disclosure in order that the disclosing Party may object to such disclosure or take any other action that it considers appropriate to protect the Confidential Information, and
 - 13.5.2 takes any reasonable actions necessary to minimize any disclosure to only that necessary to satisfy any legal requirement of a competent governmental or regulatory authority (including through redaction of sensitive commercial information, where legally permissible).
- 13.6 Neither Party shall advertise or publicly announce, communicate, or circulate the existence or terms, including pricing information, of this Agreement or any association with the other Party without the prior written consent of the other Party.
- 13.7 On termination or expiry of this Agreement, each Party shall:
- 13.7.1 destroy or return to the other Party all documents and materials (including copies) containing, incorporating or based on the other Party's Confidential Information;
 - 13.7.2 erase all the other Party's Confidential Information from computer 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
 - 13.7.3 certify in writing to the other Party that it has complied with the requirements of this Clause, provided that the receiving Party may retain documents containing, incorporating or based on the other Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.
- 13.8 This Clause 13 shall continue in force for a period of two (2) years from the actual termination date or expiry of this Agreement howsoever caused.

14. Warranty

- 14.1 The Services provided to Customer pursuant to the Agreement will substantially comply with the service descriptions identified in the Commercial Agreement. Technical data, specifications and performance figures stated in public statements are not a specification of the Services.
- 14.2 Except as specifically provided in this Agreement, all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.
- 14.3 No warranty is made regarding the compatibility of any Service with the Customer's systems or any third-party services.
- 14.4 No warranty is made regarding the suitability of the Services for any purpose.
- 14.5 Except as specifically provided in this Agreement, the Services are provided to the Customer on an "as is" basis.
- 14.6 Except as specifically provided in this Agreement, the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use. The Provider shall have no liability for any damage caused by errors or omissions in any Customer Data, information, instructions or scripts provided by the Customer to the Provider in connection with the Services, or any actions taken by the Provider at the Customer's direction.

15. Liability

- 15.1 Nothing in this Agreement limits or excludes the liability of the Provider:
- 15.1.1 for death or personal injury caused by the Provider's negligence;
 - 15.1.2 for fraud or fraudulent misrepresentation; or

- 15.1.3 for any other liability that cannot be excluded or restricted under applicable law.
- 15.2 Subject to Clause 15.1 and Clauses 14.2, 14.5 and 14.6:
 - 15.2.1 the Provider shall have no liability for any:
 - 15.2.1.1 loss of profits;
 - 15.2.1.2 loss of business;
 - 15.2.1.3 wasted expenditure;
 - 15.2.1.4 depletion of goodwill and/or similar losses;
 - 15.2.1.5 loss or corruption of data or information; or
 - 15.2.1.6 any special, indirect or consequential loss, costs, damages, charges or expenses.
- 15.3 Subject to Clauses 15.1 and 15.2, the Provider's total aggregate liability (including in respect of the indemnity at Clause 16.2) arising under or in connection this Agreement, including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise, shall be the total fees paid for the Services in the 12 month period in which the breaches occurred.
- 15.4 Any other claims for damages against Provider shall be excluded.
- 15.5 Nothing in this Agreement excludes the liability of the Customer for any breach, infringement or misappropriation of the Provider's Intellectual Property Rights.
- 15.6 The Parties undertake in the event of damage occurring or having already occurred to make all necessary efforts or to arrange for such efforts to be made without delay in order to limit the damage and keep its effects to a minimum.
- 16. Third Party Claims**
 - 16.1 The Customer shall defend, indemnify and hold harmless the Provider against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services, provided that:
 - 16.1.1 the Customer is given prompt notice of any such claim;
 - 16.1.2 the Provider provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - 16.1.3 the Customer is given sole authority to defend or settle the claim.
 - 16.2 The Provider shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services in accordance with this Agreement infringes a third-party's Intellectual Property Rights, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
 - 16.2.1 the Provider is given prompt notice of any such claim;
 - 16.2.2 the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to the Provider in the defence and settlement of such claim, at the Provider's expense; and
 - 16.2.3 the Provider is given sole authority to defend or settle the claim.
 - 16.3 In the defence or settlement of any claim, the Provider may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 5 Business Days' written notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
 - 16.4 The foregoing (and Clause 15.3) states the Customer's sole and exclusive rights and remedies, and the Provider's (including the Provider's employees, agents and sub-contractors') entire obligations and liability, for infringement of any Intellectual Property Rights.
 - 16.5 In no event shall the Provider, its employees, agents or sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
 - 16.5.1 a modification of the Services by anyone other than the Provider (or its authorised agents or contractors);
 - 16.5.2 the Customer's use of the Services in a manner contrary to the instructions given to the Customer by the Provider;
 - 16.5.3 the Customer's use of the Services after notice of the alleged or actual infringement from the Provider or any appropriate authority; or
 - 16.5.4 the Customer's breach of this Agreement.

17. Notices and Communication

- 17.1 Any notice given to a Party under or in connection with this Agreement shall be in writing and shall be:
- 17.1.1 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
 - 17.1.2 sent by email to the email addresses set out in the Commercial Agreement (or an address substituted in writing by the party to be served).
- 17.2 Any notice shall be deemed to have been received:
- 17.2.1 if delivered by hand, at the time the notice is left at the proper address;
 - 17.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00am on the second Business Day after posting; or
 - 17.2.3 if sent by email, at the time of transmission, or, if this time falls outside normal business hours in the place of receipt, when normal business hours resume.
- 17.3 This Clause 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.

18. Force Majeure

- 18.1 Other than the Customer's obligation to pay the fees owed under the Agreement, neither Party shall be deemed in breach of the Agreement for any cessation, interruption, or delay in the performance of its obligations due to causes beyond its reasonable control, including but not limited to, acts of God, natural disasters, public health emergencies, acts or orders of government, labour disputes, armed conflicts, war or terrorism ("**Force Majeure Event**").
- 18.2 The affected Party shall promptly notify the other Party of the occurrence and expected duration of the Force Majeure Event and its effects on the affected Party's ability to fulfil its obligations. The time for performance of such obligations shall be extended accordingly.
- 18.3 If the period of delay or non-performance continues for 30 days, the Party not affected may terminate this Agreement by giving 5 days' written notice to the affected Party.

19. Miscellaneous

Entire agreement

- 19.1 This Agreement comprises the entire agreement between the Parties concerning its subject matter. It shall supersede all prior or contemporaneous representations, understandings, agreements, and conventions, oral and written declarations of intent and other arrangements or side agreements (whether binding or non-binding) made by the Parties in respect of the subject matter of the Agreement. Any terms and conditions of the Customer shall not apply.
- 19.2 Each Party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 19.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation, or negligent misstatement, based on any statement in this Agreement.

Employees

- 19.4 Provider shall retain full and sole authority to hire and dismiss its employees at its discretion and to give directions to its employees who are engaged in the provision of Services to the Customer.

Waiver

- 19.5 A waiver of any right or remedy is only effective in writing (and shall not be deemed a waiver of any subsequent right or remedy).
- 19.6 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.

No partnership or agency

- 19.7 Nothing in this Agreement shall be deemed to create a joint venture, partnership, or agency relationship between the Parties or be deemed to authorize either Party to incur any liabilities or obligations on behalf of, or in the name of, the other Party and neither Party shall have the authority to act in the name or on behalf of or otherwise bind the other Party in any way (including, but not limited to, the making of any representation or warranty and the exercise of any right or power).

Variation

- 19.8 No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

Severance

- 19.9 If any provision or part-provision of this Agreement is or becomes invalid, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Agreement.
- 19.10 If any provision or part-provision of this Agreement is deemed deleted under Clause 19.9, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

Assignment

- 19.11 The Customer shall not, without the prior written consent of the Provider, assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other matter with any of its rights and obligations under this Agreement.
- 19.12 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 this Agreement, provided that it gives prior written notice of such dealing to the Customer.

Third party rights

- 19.13 Unless it expressly states otherwise, 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.
- 19.14 The rights of the Parties to rescind or vary this Agreement are not subject to the consent of any other person.

Counterparts

- 19.15 This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts together shall constitute the one agreement.
- 19.16 No counterpart shall be effective until each Party has delivered to the other at least one executed counterpart.

Rights and remedies

- 19.17 Except as expressly provided by this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

Governing law

- 19.18 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the laws of England and Wales.

Jurisdiction

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)