

COMMERCIAL LIMITED SUPPLY OF IT SERVICES GENERAL TERMS AND CONDITIONS

****The Customer's attention is drawn to
Clauses 12 & 15 of these General Terms and
Conditions****

1. INTERPRETATION

1.1 The definitions in this clause 1 apply in this Agreement, and the rules of interpretation apply in the Agreement.

Agreement refers to these general terms and conditions, Orders and any additional Order Forms.

Applicable Laws means any statute, statutory instrument, bye law, order, directive, treaty, decree or law; and/or legally binding rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body, industry code of conduct or guideline which relates to the Agreement, and/or the Commercial Solution;

Authorised User: the authorised user of the Customer who uses the Commercial Solution.

Business Day Means a day other than a Saturday, Sunday or a day which is a public or bank holiday in England;

Commercial means Commercial Limited, incorporated and registered in England and Wales with the company number 02589514, whose registered office is at Commercial House, Old Station Drive, Liddington Park, Leckhampton, Cheltenham, Gloucestershire, GL53 0DL

Commercial Solution means the Licensed Products, Products, Services and/or Software provided by Commercial to the Customer under this Agreement.

Confidential Information means all confidential information (however recorded or preserved) either disclosed by a party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services (together, its Representatives), or accessible through the provision of the Services to the other party and that party's Representatives in connection with

this agreement which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

Customer means the entity or organisation identified as 'Customer' on the relevant Order Form.

Customer Account Team means the individuals appointed by the Customer from time to time who shall serve as Commercial's primary contacts for Commercial's activities under this Agreement.

Customer Environment means the information technology infrastructure pertinent to the supply and operation of the Commercial Solution.

Customer Materials has the meaning given to it in Clause 5.2.5.

Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR), the Data Protection Act 2018 (and regulations made thereunder) or any successor legislation, and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

Data Processing Agreement means a data processing agreement entered into by Commercial and the Customer for the purposes of governing the Commercial Solution.

Delivery Point means the place where delivery of the Products is to take place under each Agreement, as set out in the Project Plan or as otherwise agreed in writing by the parties.

Employment Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

End User License Agreement means the Order Form and any additional license agreements issued by Commercial's suppliers for the provision of the Commercial Solution or any part of the Commercial Solution.

Effective Date means the date of this Agreement.

Expenses means any cost of hotel, subsistence, travelling, and any other ancillary expenses reasonably incurred by Commercial's employees, agents and/or sub-contractors in the provision of the Services;

Extended Term has the definition given to it in Clause 12.1.

Fees means the Fees set out in the Order.

Force Majeure Event means any event other than industrial action of any nature involving the staff of the party concerned or its contractors preventing either party from performing any or all of its obligations, which could not have been reasonably foreseen and/or prevented by that party including but not limited to epidemic, pandemic, war, acts of terrorism, extreme weather conditions, floods, earthquakes or fire.

Initial Term means the term identified as 'Initial Term' on the Order.

Insolvent means a party is Insolvent where it: (a) proposes or passes a resolution for its winding up (save for the purpose of a solvent reconstruction or amalgamation previously approved in writing by Commercial) or in the case of a limited liability partnership proposes or determines that it will be wound up or in the case of a partnership is subject to an application for an order or an order by a court of competent jurisdiction for its winding up; (b) is subject to an application to or order or notice issued by a court or other authority of competent jurisdiction for its winding up or striking off; (c) enters administration or is the subject of an application for administration filed at any court or a notice of intention to appoint an administrator given by any person filed at any court; (d) proposes, makes or is subject to, a company voluntary arrangement, an individual voluntary arrangement or a partnership voluntary arrangement or a composition with its/his creditors generally, an application to a court of competent jurisdiction for protection from its/his creditors generally or a scheme of arrangement under Part 26 Companies Act 2006 (save in the latter case for the purpose of a solvent reconstruction or amalgamation previously approved in writing by Commercial); (e) in the case of a partnership, has a partner who proposes, makes or is subject to an individual voluntary arrangement or composition with his creditors generally, or

makes an application to a court of competent jurisdiction for protection from his creditors generally (f) is subject to or has a bankruptcy petition or has a bankruptcy order made against him or in the case of a partnership has a partner against whom a bankruptcy petition is presented or a bankruptcy order is made or has partners all of whom jointly present bankruptcy petitions as contemplated by Article 11 Insolvency Partnerships Order 1994; (g) has a receiver or a provisional liquidator appointed over any of its/his assets, undertaking or income; (h) ceases to trade or appears, in the reasonable opinion of the other party, to be likely to cease to trade; (i) is unable to pay its debts within the meaning of section 123 Insolvency Act 1986 and/or sections 267 and 268 Insolvency Act 1986; (j) is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction;

Intellectual Property Rights Means all intellectual, confidential and other industrial property rights including patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition, copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions.

Licensed Product means the Software or cloud-based services described in the Project Plan or Specification, and any modified, updated or enhanced versions of such Software or Services that Commercial may make available to the Customer pursuant to this Agreement.

Maintenance Events means any error correction, updates and upgrades that Commercial may provide or perform with respect to the Commercial Solution, as well as any other support or training services to be provided to the Customer under this Agreement that may require interruption of the Commercial Solution.

Order means the Order Form (if applicable), written acceptance of Commercial's quotation, these general terms and conditions, the agreed

Proposal, and/or any other documentation set out by Commercial.

Order Form means the order form entered into by or on behalf of the Customer and Commercial, incorporating these general terms and conditions.

Personal Data means any information relating to an identified or identifiable living individual that Commercial processes on behalf of the Customer as a result of, or in connection with, the provision of the services under this Agreement; an identifiable living individual can be identified, directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

Product means any hardware that is to be provided by Commercial under this Agreement.

Project Plan means the detailed plan that describes and sets out the estimated timetable and responsibilities for the provision of the Commercial Solution, as agreed in writing by the parties.

Proposal means the quotation and proposal for the provision of the Commercial Solution, including the Project Plan and the Specification in the form provided by Commercial to the Customer from time to time.

Replacement Services means any services which are identical or substantially similar to the Commercial Solution (or any part of it) and which the Customer receives in substitution for any of the Commercial Solution following the termination or expiry of the Agreement, whether those services are supplied by the Customer internally or by a Replacement Supplier.

Replacement Supplier means any third-party supplier of the Replacement Services appointed by the Customer from time to time.

Representatives means the personnel, consultants, sub-contractors or any other person engaged by a party.

Service Commencement Date means the date on which the Services commence as set out in the Order.

Service Point means the place at which the Services are to be performed, as agreed in writing by the parties.

Services means the services as detailed in the order and all services, functions and responsibilities which are incidental or ancillary to those services.

Service Transfer means service transfer as provided in the employment regulations.

Service Transfer Date means the date on which the Commercial Solution (or any part of the Commercial Solution

Specification means, in relation to the Commercial Solution, the technical specification of the elements of the Commercial Solution, as set out in or referred to more particularly in the Project Plan.

Software means the software incorporated into any equipment or supplied separately by Commercial under this Agreement.

Transferring Employee means those employees whose contract of employment will be transferred to the Customer or a replacement supplier pursuant to the employment regulation on expiry or termination of the Agreement, unless they are excluded from the transfer.

1.2 Unless the context otherwise requires, the singular will include the plural and vice versa, and words denoting any gender will include all genders.

1.3 Unless context otherwise requires, reference to a "person" includes any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not it has a separate legal personality).

1.4 Clause headings are inserted only for convenience and are in no way to be construed as part of this Agreement.

1.5 References to any statute or any section of any statute include any statutory amendment, modification or re-enactment and instruments and regulations under it in force from time to time, unless the contrary is stated. References to any rules, regulations, codes of practice or

- guidance include any amendments or revisions from time to time.
- 1.6 References to a "month" are to a calendar month, and "year" is to a calendar year.
- 1.7 Use of the words "include", "includes", "including", "included" and "in particular" or any similar words or expressions shall be construed without limitation, unless expressly stated to the contrary.
- 2. FORMATION AND INCORPORATION**
- 2.1 Any Proposal given by Commercial to the Customer shall not constitute an offer and shall only be valid for a period of 30 days.
- 2.2 Each order will constitute an offer by the Customer to purchase and/or hire (as applicable) the Commercial Solution upon these terms and conditions.
- 2.3 The Order shall only be deemed to be accepted when Commercial issues written acceptance of the order, at which point and on which date the Agreement shall come into existence.
- 2.4 This Agreement and the End User License Agreements are the sole and conclusive evidence as to the terms and conditions as agreed between the parties (save for manifest error). Acceptance of delivery of the Commercial Solution or commencement of the performance of the Commercial Solution under the contract is conclusive evidence of the Customer's acceptance of the Agreement to the exclusion of all other terms and conditions (save for manifest error).
- 2.5 Orders placed by the Customer for the Commercial Solution leading to a contract which are not expressly subject to these Terms and Conditions shall nevertheless be subject to them.
- 2.6 Details and/or specifications in brochures, price lists and other marketing material produced by Commercial are intended as a guide only and only give a general approximation of the Commercial Solution.
- 2.7 All warranties, conditions and other terms implied by law (whether by statute, common law or otherwise) are excluded from the Agreement.

3. SUPPLY OF LICENSED PRODUCTS

- 3.1 Commercial will ensure that the Licensed Product will comply with all Applicable Law and regulatory requirements.
- 3.2 Commercial will ensure that at all times it has and maintains all licenses, permissions, authorisations, consents and permits that it needs to carry out its obligations under this Agreement in respect of the Licensed Products.
- 3.3 Commercial warrants that the Licensed Product will conform in all material respects to the Specification for a period of 90 days from the date of this agreement (**Warranty Period**). If within the Warranty Period, the Customer notifies Commercial in writing of any defect or fault in the Commercial Solution in consequence of which it fails to conform in all material respects to the Specification, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Licensed Product or used it outside the terms of this license for a purpose or in a context other than the purpose of context for which it was designed or in combination with any other software which has not been provided by Commercial, or it has not been loaded onto Commercial-specific or suitably configured equipment, Commercial shall, at its sole discretion, do one of the following;
- 3.3.1 Repair the Licensed Product;
- 3.3.2 Replace the Licensed Product; or
- 3.3.3 Terminate this agreement immediately by notice in writing to the Customer;
- Provided the Customer provides all information that may be necessary to assist Commercial in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable Commercial to recreate the defect or fault and the information is provided to Commercial in accordance with Commercial's reporting requirements as notified to the Customer from time to time.
- 3.4 Commercial does not warrant that the use of the Licensed Product or the Commercial Solution will be uninterrupted or error-free.
- 3.5 Commercial does not warrant that any of the Commercial Solution will be fit to operate in conjunction with any other equipment or

- software that are identified in the Specification or as otherwise notified to the Customer, as being compatible with the Commercial Solution.
- 3.6 The Licensed Product, Specifications, and any additional documentation provided by Commercial are provided on an "as is" basis. The express warranties in this agreement are in lieu of all other warranties, whether express, implied or statutory, regarding the Licensed Product, the Commercial Solution or the Specification, including any warranties of merchantability, fitness for a particular purpose, title and non-infringement of third-party rights and all warranties arising from course of dealings or usage of trade. The Customer acknowledges that it has relied on no warranties other than the express warranties in this agreement and that no warranties are made by any of Commercial's suppliers. No party shall have any claim for innocent misrepresentation based upon any statement in the Agreement and/or made in relation to the Agreement or the subject matter of the Agreement prior to the date of the Agreement.
- 3.7 Subject to Clause 4.1, Commercial will make the Licensed Product available:
- 3.7.1 On the date specified by Commercial in writing or, if no such date is specified, then within 5 days of the day the Licensed Product was ordered, based solely on the Customer's availability to access the Licensed Product;
- 3.7.2 To the Customer's location as instructed by the Customer before delivery; and
- 3.7.3 During the Customer's normal hours of business on a Business Day or as instructed by the Customer.
- 3.8 Delivery of the Licensed Product will be completed upon making the Licensed Product available to the Customer.
- 3.9 Commercial shall provide electronic confirmation of delivery to the Customer.
- 3.10 The Customer accepts responsibility for the selection of the Commercial Solution to achieve its intended results and acknowledges that the Commercial Solution has not been developed

to meet the individual requirements of the Customer.

- 3.11 Commercial may, at its discretion, make Maintenance Releases of the Commercial Solution available to the Customer as and when required without charge.
- 3.12 For the avoidance of doubt, the cost of the Maintenance Release is included in the Fees but excludes any sum payable by the Customer in respect of the licence for any New Version of the Commercial Solution.
- 3.13 Commercial shall, at the Customer's request, install, configure and integrate any Maintenance Release at a charge to be determined by Commercial.
- 3.14 If the Customer fails to install a Maintenance Release or allow Commercial access to a Service Point or such other premises as may be required to install a Maintenance Release within one month of Commercial notifying the Customer that such Maintenance Release is available for installation, Commercial shall be entitled, at its sole discretion to suspend any related Services by one month's written notice to the Customer.

4. COMMERCIAL'S OBLIGATIONS

- 4.1 Commercial shall use its reasonable endeavours to deliver the Commercial Solution by the delivery dates and performance dates set out in the Project Plan, but any such dates will be estimates only and time will not be of the essence of the Agreement. If despite these endeavours, Commercial is unable for any reason to fulfil any delivery or performance date, Commercial will not be deemed to be in breach of this Agreement, nor will Commercial have any liability to the Customer for indirect or consequential loss (which shall include but not be limited to pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) however caused by any delay or failure in delivery and/or performance except as set out in this clause. Any delay in delivery and/or performance will not entitle the Customer to cancel the order.
- 4.2 Subject to the Customer's compliance with the clauses 9 and 10, Commercial will use reasonable endeavours during the term of the Agreement to supply the Commercial Solution specified in the Agreement using reasonable skill, care and diligence in accordance with

- good industry practice for supplying the Commercial Solution or services of a similar nature as the Commercial Solution.
- 4.3 Commercial reserves the right to make any changes to the Commercial Solution, which are necessary to comply with any safety requirements, Mandatory Policy or Applicable Laws.
- 5. SUPPLY OF SERVICES**
- 5.1 Subject to Clause 4.1, Commercial will, from the Service Commencement Date and for the duration of this Agreement, supply the Services to the Customer in accordance with the terms of this Agreement.
- 5.2 In providing the Services, Commercial will:
- 5.2.1 Co-operate with the Customer in all matters relating to the Services, and comply with reasonable requests of the Customer;
- 5.2.2 Ensure that the Services will conform materially with all descriptions and specifications set out in the Specification(s);
- 5.2.3 Obtain and at all times maintain all licenses and consents which may be required for the provision of the Services
- 5.2.4 Comply with all Applicable Laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services;
- 5.2.5 Hold all material, equipment and tools, drawings, specifications and data supplied by the Customer to Commercial (**Customer Materials**) in safe custody at its own risk and maintain in good condition the Customer Materials until returned to the Customer, and not dispose of or use Customer Materials other than in accordance with the Customer's written instructions or authorisations.
- 6. DELIVERY OF PRODUCTS**
- 6.1 Unless otherwise set out in the Proposal, delivery of the Products will be made to the Delivery Point, and the Services will be performed at the Service Point. The Customer acknowledges and accepts that certain Services may not be performed by Commercial at the Service Point.
- 6.2 Unless otherwise detailed in the Order, Commercial may invoice the Customer for the Products where the Products are received by Commercial.
- 6.3 Where a site and/or technical survey has been required prior to installation, delivery or performance of the Commercial Solution, the Customer will ensure that any necessary actions notified in the survey report have been implemented prior to delivery.
- 6.4 If the Customer fails to take delivery of any of the Products when they are ready for delivery or to provide any instructions, documents, licenses or authorisations required to enable the Products to be delivered (except solely on account of Commercial's default), the Products will be deemed to have been delivered on the specific date as provided in clause 4.1 and (without prejudice to its other rights) Commercial may:
- 6.4.1 Store or arrange for storage of the Products until actual delivery or sale in accordance with clause 6.4.2 and will reserve the right to charge the Customer for all related costs and expenses (including storage and insurance); and/or
- 6.4.2 Following written notice to the Customer, sell any of the Products at the best price reasonably obtainable in the circumstances and charge the Customer for any shortfall below the relevant Fees or account to the Customer for any excess achieved over the relevant Fees, in both cases having into account any charges related to the sale.
- 7. RISK AND TITLE**
- 7.1 Risk of damage to or loss of the Products shall pass to the Customer on delivery. The Customer shall have the right to possess the Products upon delivery.
- 7.2 Title in the Commercial Solution, including any Intellectual Property Rights, will not pass to the Customer.

8. IMPLEMENTATION AND TESTING

8.1 If, as part of the Commercial Solutions to be provided under the Agreement, any implementation activities are to be supplied, Commercial shall deliver such implementation activities in accordance with the procedures and testing specified in the relevant Specification or Project Plan.

9. CUSTOMER OBLIGATIONS

9.1 The Customer will comply with all of its obligations in the Agreement in a reasonable and timely manner.

9.2 Unless otherwise provided in this Agreement, the Customer will at all times:

- 9.2.1 Comply with all Applicable Laws;
- 9.2.2 Obtain and maintain in force all memberships, licenses, registrations, approvals, consents or qualifications necessary to perform its obligations under the Agreement or otherwise in respect of the Commercial Solution;
- 9.2.3 Respond promptly to requests for information, directions and/or recommendations which Commercial or any relevant third party requests in order to deliver the Commercial Solution.
- 9.2.4 Be responsible (at its own cost) for preparing the relevant premises and Customer Environment for the supply of Commercial Solution;
- 9.2.5 Take all reasonable and usual precautions to safeguard and maintain the Customer Environment and the Products, including taking regular and usable backups, operating firewalls and virus checks and implementing effective and appropriate data security;
- 9.2.6 provide such personnel assistance, including the Customer Account Team and other Customer personnel, as may be reasonably requested by Commercial from time to time. The Customer shall use reasonable endeavours to ensure continuity of its personnel assigned to this agreement;

9.2.7 only use the Commercial Solution for the purposes described in the Specification;

9.2.8 carry out all other Customer responsibilities set out in this agreement or in any of the schedules in a timely and efficient manner; and

9.2.9 Will at all times make prompt payments for any undisputed invoices.

9.3 The Customer shall provide Commercial or Commercial's suppliers with:

- 9.3.1 Provide Commercial with timely and reasonable instructions and directions in respect of the performance of the Services.
- 9.3.2 all necessary co-operation in relation to this agreement; and
- 9.3.3 all necessary access to such information and/or documents as may be required by Commercial or its supplier,

9.4 If Commercial's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, Commercial shall be allowed:

- 9.4.1 an extension of time to perform its obligations equal to the delay caused by the Customer; and
- 9.4.2 to increase the Fees that may be payable where such delay, act or omission has caused Commercial to incur costs or reallocate resources elsewhere.

9.5 The Customer acknowledges that unless otherwise provided in the Agreement, it will be responsible for the secure disposal of any Customer hardware, operating system or network operating system which is not supplied by Commercial as part of the provision of the Commercial Solution. The Customer shall also ensure the secure erasure of any Personal Data on any Customer hardware, operating system or network that it destroys.

- 9.6 On the expiry or termination of the Agreement, the Customer shall on reasonable notice provide Commercial with such access as Commercial reasonably requires to the relevant Delivery Point and/or Service Point and such other premises as may be reasonably required to remove any of the Commercial Solution, the ownership of which remains with Commercial. All such equipment shall be removed by Commercial as soon as reasonably practicable.
- 9.7 To use the Commercial Solution, the Customer must provide devices, operating systems and licenses necessary to use the Software, including the licenses for applications and software downloaded or installed through the Commercial Solution. The Customer will use commercially reasonable steps to ensure that it does not disturb or interfere with the operation of the Software. If any Software update requires changes to the Customer's device or software, the Customer must implement these changes at their own expense.
- 9.8 The Customer shall use its reasonable endeavours to ensure that all of its staff who will use the Commercial Solution complete the relevant training, as agreed with Commercial, to help them to become competent in the use of the Commercial Solution.
- 9.9 The Customer shall not access, store, distribute or transmit any viruses or any material during the course of its use of the Commercial Solution that:
- 9.9.1 Is illegal or causes damage or injury to any person or property; or
- 9.9.2 Commercial considers (acting reasonably) may be likely to cause harm or offense to any person or property.
- Commercial reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to the Commercial Solution.
- 9.10 The Customer shall alert Commercial where the Customer becomes aware that the use of the Commercial Solution (whether by an Authorised User of the Customer or otherwise) breaches any terms of this Agreement or where the Customer reasonably suspects that the use of the Commercial Solution breaches any terms of this Agreement.
- 9.11 The Customer shall not:

- 9.11.1 Attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit or distribute all or any portion of the Commercial Solution in any form or media or by any means or attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Commercial Solution;
- 9.11.2 Access all or any part of the Commercial Solution in order to build a product or service that competes with the Commercial Solution;
- 9.11.3 Use the Commercial Solution to provide services to third parties or commercially exploit or otherwise make available to any third party; or
- 9.11.4 Introduce or permit the introduction of any virus into the Commercial Solution or Commercial's network and/or information systems.

10. FEES AND PAYMENT

- 10.1 The Customer shall pay the Fees.
- 10.2 Unless otherwise stated in the Order, all amounts and Fees stated or referred to in this Agreement are exclusive of value-added tax, which shall be added to Commercial's invoice(s) at the applicable rate.
- 10.3 Unless otherwise stated in Order, the Fees are exclusive of packaging, insurance, carriage and delivery costs and Expenses in respect of the Commercial Solution.
- 10.4 Unless otherwise stated in the Order, Commercial shall invoice the Customer monthly as of the last day of each month for the Fees due for that month.
- 10.5 Except where an invoice is disputed in good faith in accordance with clause 17, if the Customer fails to make any payment due to Commercial under this agreement by the due date for payment, then, without limiting Commercial's remedies under clause 11, the

- Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 10.6 Each invoice shall be payable by the Customer within 30 days following the end of the month in which the invoice was issued.
- 10.7 All payments shall be made in pounds sterling in cleared funds by BACS (Bank Automated Clearing System) transfer to such bank account as Commercial may nominate from time to time.
- 10.8 Unless otherwise detailed in the Order Commercial may, at its sole discretion, increase the Fees by up to 7.5% per annum. Any further increase shall be agreed in writing with the Customer. Commercial shall give the Customer as much notice as is reasonably practicable of any increase in the Fees.
- 10.9 Commercial may, at its sole discretion, increase Fees in accordance with any increase in the underlying supplier costs.
- 10.10 Save as otherwise expressly agreed in the Agreement or required by law or in accordance with a clause 10.11, all payments to be made by the Customer to Commercial under the Agreement shall be made in full and without any set-off or any deduction or withholding, including on account of any counter-claim.
- 10.11 If the Customer reasonably disputes any portion of a Commercial invoice for the Commercial Solution, the Customer must pay the undisputed portion of the invoice and submit a written notice of the claim with sufficient detail for the nature of the claim, the amount and the invoice in dispute. All billing disputes must be submitted to Commercial within thirty (30) days from the date of the disputed invoice. The Customer waives the right to dispute any charges not disputed within such thirty (30) day period. In the event the dispute is resolved against the Customer, the Customer shall pay such amounts plus any interest pursuant to Clause 10.5.
- 10.12 On termination of the Agreement:
- 10.12.1 For any reason, all invoices issued by Commercial will become

immediately due and payable by the Customer; and

- 10.12.2 Commercial shall be entitled to invoice all Fees and any Expenses, packaging, insurance, carriage and delivery costs incurred which have not yet been invoiced, but which have been incurred during the term of this Agreement.

11. CONFIDENTIALITY

- 11.1 Except to the extent set out in this Clause 11, or where disclosure is expressly permitted elsewhere in this Agreement, each party agrees to keep confidential, both during the Initial Term and the Extended Term, all Confidential Information of the other and not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 11.2 Clause 11.1 will not apply to the extent that such information is:
- 11.2.1 already known to or in possession of the receiving party prior to its disclosure;
- 11.2.2 publicly available at the time of its disclosure or becomes publicly available through no wrongful act of the receiving party;
- 11.2.3 rightfully received from a third party without obligation of confidentiality;
- 11.2.4 independently developed by the receiving party without breach of this Agreement or access to the applicable Confidential Information of the other party; or
- 11.2.5 is approved for release upon the written permission of the disclosing party.
- 11.3 Commercial may only disclose the Customer's Confidential Information to Commercial's Representatives who are directly involved in the performance of this Agreement and who need to know the information. Commercial will ensure that such Representatives are aware of, and comply with, the confidentiality obligations set out in this Clause 11.
- 11.4 Commercial will not, and will procure that the Commercial's Representatives do not, use any

- of the Customer's Confidential Information otherwise than for the purposes of this Agreement.
- 11.5 The Customer will ensure that Representatives to whom it discloses Commercial's Confidential Information are made aware of the Customer's obligations of confidentiality under this Clause 11.
- 11.6 On the termination of this Agreement for any reason each party will forthwith return or, at the other party's designation, forthwith destroy all Confidential Information (and all copies thereof whether held by the party by computer, paper or other means) in its possession or control on the date of termination (including, if required, by way of electronic data transfer) and certify to the other party that it has done so.
- 11.7 For the purposes of this Agreement, the Confidential Information will be deemed to include all Personal Data relating to individuals (including, for the avoidance of doubt, customers of the Customer) that is acquired or collected by either party in connection with this Agreement.
- 12. TERM AND TERMINATION**
- 12.1 This agreement shall commence on the Effective Date. The Services shall commence on the Service Commencement Date. Unless terminated earlier in accordance with this clause 12. This Agreement shall continue in force for the Initial Term and shall automatically extend for successive 12-month periods (**Extended Term**) at the end of the Initial Term and at the end of each Extended Term. A party may give written notice to the other party, not later than 90 days before the end of the Initial Term or the relevant Extended Term, to terminate this agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.
- 12.2 Without prejudice to any rights that the parties have accrued under this agreement or any of their respective remedies, obligations or liabilities, Commercial may terminate this agreement with immediate effect by giving written notice to the other party if:
- 12.2.1 the Customer fails to pay any undisputed amount due under this agreement on the due date for payment;
- 12.2.2 the Customer commits a material breach of any 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;
- 12.2.3 the Customer commits a series of breaches of this agreement which are each individually not material, but which occur sufficiently often to have, in aggregate, the effect of being a material breach;
- 12.2.4 the Customer
- 12.2.4.1 becomes Insolvent; or
- 12.2.4.2 suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- 12.2.5 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 12.3 Commercial may, on giving the other party 30 days' prior written notice at any time, terminate without liability to the Customer, the whole or any part of the Agreement without liability to the other party.
- 12.4 Commercial may terminate without liability to the Customer, the whole or any part of the Agreement, where Commercial's supplier terminates the agreement to supply any part of the Commercial Solution.
- 12.5 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.
- 12.6 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 13. CONSEQUENCES OF TERMINATION**
- 13.1 On termination of this Agreement:

- 13.1.1 the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination; and
- 13.1.2 Clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 13.2 The Customer shall not be entitled to any claims, compensation or damages arising out of the valid termination of this Agreement in accordance with this Agreement notwithstanding any provision or rule of law to the contrary.
- 13.3 Notwithstanding any credit terms extended to the Customer prior to the termination, the Customer shall immediately pay to Commercial all of Commercial's unpaid invoices and interest and where no invoice has been submitted for services supplied, Commercial may submit an invoice which shall be payable immediately on receipt.
- 13.4 Save as expressly provided elsewhere in this Agreement, neither party has any Liability to pay any costs, expenses, or other sums to the other arising out of the expiration of this Agreement.
- 13.5 The termination of this Agreement, howsoever arising, is without prejudice to the rights, duties and liability of either Commercial or the Customer accrued prior to termination. The provisions which expressly or impliedly have effect after termination will continue to be in force notwithstanding termination.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 Commercial shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all and other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights

arising out of or in connection with the supply or use of the Commercial Solution.

- 14.2 The Customer shall indemnify Commercial against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all and other reasonable professional costs and expenses) suffered or incurred by Commercial arising out of or in connection with any claim made against Commercial for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the supply or use of any Commercial Solution that have been manufactured or created using the Customer's Intellectual Property Rights and/or which are made to a design or specification supplied by the Customer.

- 14.3 The Customer shall indemnify Commercial against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all and other reasonable professional costs and expenses) suffered or incurred by Commercial arising out of or in connection with any claim made against Commercial as a result of the Customer's use of the Commercial Solution in combination with software or equipment not supplied or approved in writing by Commercial, resulting from any modification of the Commercial Solution or otherwise arising from the Customer use of the Commercial Solution not approved in writing by Commercial.

15. LIMITATION OF LIABILITY

- 15.1 This Clause 15.1 sets out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees, agents and subcontractors) to each other for any breach of this Agreement however arising save that nothing in this Agreement will limit or exclude the liability of either party for:

- 15.1.1 death or personal injury resulting from negligence; or
- 15.1.2 fraud or fraudulent misrepresentation; or

15.1.3	breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982; or		
15.1.4	any indemnity contained within this Agreement; or		
15.1.5	any liability which it would be unlawful to exclude or restrict.		
15.2	Without prejudice to Clauses 14 (Intellectual Property Rights) Commercial will not under any circumstances whatever be liable to the Customer, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:		
15.2.1	loss of profit;		
15.2.2	loss of goodwill;		
15.2.3	loss of business;	16.3	All right, title and interest in and to third-party patches which may be accessed through the Software is the property of the respective owners and are protected by applicable laws and treaties, including intellectual property laws. These terms do not grant the Customer any ownership rights to such content.
15.2.4	loss of business opportunity;	16.4	The Software may use third-party software based on open-source licenses that may supersede this Agreement to the extent required by that open-source license. All open-source software is provided on an "AS IS" and without any warranty.
15.2.5	loss of anticipated saving;	16.5	The Software may include or utilise certain software which is owned by Json.NET, the source code of which is available under the MIT license. The Json.net license is available on request. The terms under the Json.NET license apply to this Agreement.
15.2.6	loss or corruption of data or information; and	16.6	The Software may include or utilise certain software which is owned by Prism, the source code of which is available under the MIT license. The License for the Prism code is available on request. Those terms are fully applicable to the use of those portions of the Software that consist of or are derived from the Prism code.
15.2.7	special, indirect or consequential damage	16.7	The Software may include or utilise certain software which is owned by System.ValueTuples, the source code of which is available under the MIT license. The license for the System.ValueTuple code is available on request. Those terms are fully applicable to the use of those portions of the Software that consist of or are derived from the System.ValueTuple code.
	that arises under or in connection with this Agreement.	16.8	The Software may include or utilise software that was copyrighted by App vNext,
15.3	Subject to Clause 4 (Commercial's Obligations), the terms implied by sections 3 to 5, 8 to 10, 11C to 11E, 11H to 11K and 13 to 15 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.	16.9	Commercial or Commercial's suppliers may make modifications to the code detailed under Clauses 16.4, 16.5, 16.6, 16.7 & 16.8.
15.4	Without prejudice to Clause 15.1, Commercial's total liability arising under or in connection with this Agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, will in all circumstances be limited to the Fees paid by the Customer in the previous 6 months of this Agreement.		
16.	SOFTWARE LICENCE		
16.1	If Commercial refers to a software licence in the Project Plan or elsewhere in this Agreement, the price of the Commercial Solution includes the licence fee for the Customer's right to use the Software.		
16.2	The Software is provided exclusively under a license agreement. Commercial and its		

suppliers reserve all rights not expressly granted in this Agreement. All Intellectual Property Rights are and will remain the exclusive property of Commercial and/or its relevant suppliers. Notwithstanding any contrary language in any Customer issued purchase orders or other documents, all rights, title and interest in and to the Software, documentation and corresponding Intellectual Property Rights remains the property of Commercial or its relevant supplier.

16.10 If the Customer (or its affiliates or successors) provide Commercial or its suppliers with any ideas, suggestions, feature requests, recommendations or other feedback (collectively "Ideas") relating to the Commercial Solution, Commercial and/or Commercial's suppliers (as required) shall have a royalty-free, worldwide, transferable and sublicensable, irrevocable, non-exclusive, perpetual license to use such Idea in the Software.

17. END USER'S LICENSE AGREEMENT

17.1 The Customer acknowledges and accepts that as part of the Commercial Solution, Commercial will be required to accept a number of End User License Agreements on behalf of the Customer. The Customer hereby irrevocably gives consent for Commercial to accept the End User License Agreement and the Customer Agrees to be bound by such End User License Agreement.

17.2 Copies of the End User License Agreement are available upon request.

17.3 The Customer acknowledges and agrees that Commercial shall not make the Commercial Solution available to the Customer. Commercial shall not be liable for any delay in the provision of the Commercial Solution cause due to any delays in acceptance of the End User License Agreement by the Customer.

17.4 The Customer shall indemnify Commercial against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all and other reasonable professional costs and expenses) suffered or incurred by Commercial arising out of or in connection with the Customer's use of the Commercial Solution including breach of the End User License Agreement.

17.5 The Customer shall ensure that all Authorised Users are aware of their obligations under the End User License Agreement.

18. IMPLIED AUTHORITY

18.1 Throughout the term of this agreement, the Customer authorises Commercial to take whatever actions Commercial considers appropriate (acting reasonably) upon the occurrence of an incident or in response to a threat of an incident occurring. Such actions may include:

18.1.1 The isolation of any devices from the Customer's information technology systems and infrastructure.

18.1.2 Maintenance Events;

18.1.3 The installation of third-party software on any devices; and/or

18.1.4 Requests and analysis of samples of files, scripts or other sources on or related to any devices

19. DISPUTE RESOLUTION

19.1 If a dispute arises under this agreement (**Dispute**), including any Dispute arising out of any amount due to a party hereto, then before bringing any suit, action or proceeding in connection with such Dispute, a party must first give written notice of the Dispute to the other party describing the Dispute and requesting that it is resolved under this dispute resolution process (Dispute Notice).

19.2 If the parties are unable to resolve the Dispute within 30 days of delivery of the Dispute Notice, then each party shall promptly (but no later than five Business Days thereafter):

19.2.1 appoint a designated representative who has sufficient authority to settle the Dispute and who is at a higher management level than the person with direct responsibility for the administration of this agreement (Designated Representative); and

19.2.2 notify the other party in writing of the name and contact information of such Designated Representative.

19.3 The Designated Representatives shall then meet as often as they deem necessary in their reasonable judgment to discuss the Dispute and negotiate in good faith to resolve the Dispute. The Designated Representatives shall mutually determine the format for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one party to the other party shall be honoured.

19.4 If the parties are unable to resolve the Dispute within 30 days after the appointment of both Designated Representatives, then either party may proceed with any other available remedy.

19.5 Notwithstanding the foregoing, either party may seek interim or other equitable relief necessary (including an injunction) to prevent irreparable harm.

20. RECOMMENDATION OF THIRD-PARTY PRODUCTS AND SERVICES

20.1 Commercial may, from time to time, recommend third-party products and/or services. Commercial makes no representations or warranty whatsoever regarding such products or services. The Customer's use of any third-party products and services. The Customer's use of any third party products and/or services are governed by the terms of the agreement with the provider of those products and/or services, and its warranties. Use of third-party equipment or software us at the Customer's sole risk. Unless otherwise provided for in the Agreement or by written agreement between the parties, Commercial is not responsible in any way for any third-party equipment, services or product's performance, features or failures.

20.2 Both parties agree that neither shall (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any employee or employed or engaged by such other party in relation to the supply of the Commercial Solution either whilst the Commercial Solution are being supplied or for a further period 12 months after the termination of the Agreement relating to the Commercial Solution other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.

20.3 If either party commits a breach of the clause 20.2, the breaching party shall, on demand, pay to the claiming party a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor, plus the recruitment costs incurred by the claiming party in replacing such person

21. TRANSFER OF EMPLOYMENT

21.1 In the event of a Service Transfer to which TUPE applies, to the extent that any employee of Commercial invokes rights under TUPE such that they are a Transferring Employee:

21.1.1 Commercial shall be permitted to offer continuing employment to some or all of the Transferring Employees in Commercial's discretion; and

21.1.2 Commercial shall comply with its obligations to provide employee liability information to the Customer and/or to the Replacement Supplier, including details of the Transferring Employees

21.2 The Customer shall indemnify Commercial against all claims arising from the Customer's or Replacement Suppliers failure to perform and discharge any obligations and against any claims in respect of any Transferring Employees arising from or as a result of:

21.2.1 Any act or omission by the Customer or the replacement supplier relating to a Transferring Employee occurring on or after the service transfer date; and

21.2.2 All and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including, without limitation, all wages, bonuses, PAYE, national insurance contributions, pension contributions and otherwise) accrued and payable after the service transfer date.

21.3 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any relevant transfer as a consequence of a service transfer will be fulfilled.

21.4 The Customer shall assume (or shall procure that the Replacement Supplier shall assume) the outstanding obligation of Commercial in relation to any Transferring Employees in respect of accrued holiday entitlements and accrued holiday remuneration prior to the service transfer date.

21.5 The parties agree that the Contracts (rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any Replacement Supplier shall have the right to enforce the obligations owed to, and the indemnities given

to, the Replacement Supplier by Commercial or the Customer to Commercial in this clause.

22. FORCE MAJEURE

22.1 Neither party to this Agreement will be deemed to be in breach of this Agreement or otherwise liable to the other party in any manner whatsoever for any failure or delay wholly or in part in performing its obligations under this Agreement due to a Force Majeure Event.

22.2 If the Force Majeure Event continues for a period in excess of 30 days, Commercial may terminate this Agreement by giving 30 days' notice in writing to the Customer. On the expiry of this notice period, this Agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

23. NOTICE

23.1 All notices must be in writing and will be deemed given if delivered in person or sent by email, pre-paid first class post or registered post or by fax to the other party to the address, email address or fax number set out in the Project Plan or such other address, email address or fax number as from time to time notified by the other party.

23.2 Notice will be deemed to have been received 2 working days after posting or, if given by hand or fax, at the time of delivery or transmission or, if sent by email, on acknowledgement.

23.3 This Clause 23 does not apply to the service of any legal proceedings.

24. ANTI-SLAVERY AND HUMAN TRAFFICKING

24.1 Both parties shall:

24.1.1 Comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including but not limited to the Modern Slavery Act 2015;

24.1.2 Not engage in any activity, practice or conduct that would constitute an offence under sections 1,2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in the UK;

24.2 Any breach of this clause 24 shall be deemed to be a material breach of this Agreement.

25. ANTI-BRIBERY

25.1 Both parties shall during the term of this Agreement:

25.1.1 Not engage in any activity, practice or conduct which would constitute an offence under section 1,2 or 6 of the Bribery Act 2010 if such activity or practice had been carried out in the UK;

25.1.2 Establish, maintain and enforce its own policies and procedures, including adequate procedures under the Bribery Act 2010;

25.1.3 Promptly notify the other (in writing) if it becomes aware of any breach of Clause 25.1.1 or has a reason to believe that it has received a request or demand for any undue financial or other advantage;

25.1.4 Immediately notify the other party (in writing) if a foreign public official becomes an officer or employee of the notifying party, and both parties warrant that they have no foreign public officials as officers or employees at the Effective Date.

25.2 Any breach of this clause 25 shall be deemed a material breach of this Agreement.

25.3 In the event that Commercial has reason to believe that a breach of this Clause 25 and/or Clause 24 has occurred or will occur, Commercial may, without penalty, (a) withhold further delivery of the Commercial Solution until such time it has received confirmation to its satisfaction that no breach has or will occur; or (b) immediately terminate the Agreement. Commercial may request that the Customer and its agents, directors and employees certify in writing that it has not and will not breach this Clause 25 and/or Clause 24 and the Customer shall promptly provide such certifications. Notwithstanding any other clause herein, the Customer agrees to defend, indemnify and hold harmless Commercial from and against any claims, liabilities, costs or expenses resulting from the Customer's violation of such laws or regulations or any breach of this Clause 25 and/or Clause 24 by the Customer or any of its agents, officers, directors or employees.

25.4 For the purposes of this clause 25, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance given under section 9 of the Bribery Act 2010) sections 6(5) and 6(6) of that Act and section 8 of the Bribery Act 2010 respectively.

26. PERSONAL DATA

26.1 Both parties shall comply with the Data Processing Agreement (if applicable) and all applicable requirements of the Data Protection Legislation.

26.2 Commercial shall process personal data as a processor on behalf of the Customer.

26.3 Both parties shall

26.3.1 ensure that they have all necessary notices and lawful bases in place to process the shared personal data for the purposes of this Agreement;

26.3.2 give full information to any data subject whose shared personal data may be processed under this agreement of the nature of that processing;

26.3.3 ensure that they have in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of shared personal data and against accidental loss or destruction of, or damage to, shared personal data;

26.3.4 provide the other with reasonable assistance in complying with any data subject rights request and

26.3.5 notify the other party without undue delay on becoming aware of any personal data breach in relation to any shared personal data and do all things reasonably necessary to assist the other art in mitigating the effects of the personal data breach.

27. DATA PROTECTION

27.1 Definitions and interpretation

The following additional definitions and rules of interpretation apply to this Clause 27

Definitions

Authorised Person means the persons or categories of persons that the Customer authorises to give Commercial written personal data processing instructions and from whom Commercial agrees to accept such instructions.

Commissioner means the Information Commissioner (see Article 4(A3) UK GDPR and section 114, DPA 2018)

Controller has the meaning given to it in section 6, DPA 2018

Processing, processes, processed, process means any activity that involves the use of the Personal Data or on sets of the Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restrictions, erasure or destruction. Processing also includes transferring the Personal Data to third parties.

Personal Data Breach means a breach of security leading to the accidental, unauthorised, or unlawful destruction, loss, alteration, disclosure of, or access to the Personal Data.

Processor means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the Controller.

Records have the meaning given to it in Clause 27.12.

Standard Contractual Clauses (SCC) the United Kingdom or European Commission's Standard Contractual Clauses for the transfer of Personal Data from the UK or European Union to processors established in third countries (controller-to-processors transfers), as set out in the Annex to Commission Decision 2010/87/EU, or such alternative clauses as may be approved by the United Kingdom or European Commission from time to time.

Subcontractors any subcontractor that is identified in the Order and/or the Data Processing Agreement.

Term has the meaning given to it in Clause 27.10.1.

UK GDPR has the meaning given to it in section 3(10) of the DPA 2018 (as supplemented by section 205(4)).

27.2 Personal data types and processing purposes

27.2.1 The Customer and Commercial agree and acknowledge that for the purpose of the Data Protection Legislation:

- 27.2.1.1 the Customer is the controller and Commercial is the processor.
 - 27.2.1.2 the Customer retains control of the Personal Data and remains responsible for its compliance obligations under the applicable Data Protection Legislation, including but not limited to providing any required notices and obtaining any required consents, and for the written processing instructions it gives to Commercial.
 - 27.2.1.3 The Proposal describes the subject matter, duration, nature and purpose of the processing and the Personal Data categories and Data Subject types in respect of which Commercial may process the Personal Data to fulfil the Proposal.
- 27.3 Commercial's obligations
- 27.3.1 Commercial will only process the Personal Data to the extent, and in such a manner, as is necessary for the Proposal in accordance with the Customer's written instructions. Commercial will not process the Personal Data for any other purpose or in a way that does not comply with this Agreement or the Data Protection Legislation. Commercial must promptly notify the Customer if, in its opinion, the Customer's instructions do not comply with the Data Protection Legislation.
 - 27.3.2 Commercial must comply promptly with any Customer written instructions requiring Commercial to amend, transfer, delete or otherwise process the Personal Data, or to stop, mitigate or remedy any unauthorised processing.
 - 27.3.3 Commercial will maintain the confidentiality of the Personal Data and will not disclose the Personal Data to third parties unless the Customer or this Agreement specifically authorises the disclosure, or as required by domestic law, court or regulator (including the Commissioner). If a domestic law, court or regulator (including the Commissioner) requires Commercial to process or disclose the Personal Data to a third party, Commercial must first inform the Customer of such legal or regulatory requirement and give the Customer an opportunity to object or challenge the requirement, unless the domestic law prohibits the giving of such notice.
 - 27.3.4 Commercial will reasonably assist the Customer, at no additional cost to the Customer, with meeting the Customer's compliance obligations under the Data Protection Legislation, taking into account the nature of Commercial's processing and the information available to Commercial, including in relation to Data Subject rights, data protection impact assessments and reporting to and consulting with the Commissioner under the Data Protection Legislation.
 - 27.3.5 Commercial must promptly notify the Customer of any changes to the Data Protection Legislation that may reasonably be interpreted as adversely affecting Commercial's performance of this Agreement or this Agreement.
- 27.4 Commercial's employees
- 27.4.1 Commercial will ensure that all of its employees:
 - 27.4.1.1 are informed of the confidential nature of the Personal Data and are bound by confidentiality obligations and use restrictions in respect of the Personal Data;

	27.4.1.2	have undertaken training on the Data Protection Legislation relating to handling Personal Data and how it applies to their particular duties; and	physical or technical incident; and
	27.4.1.3	are aware of both Commercial's duties and their personal duties and obligations under the Data Protection Legislation and this Agreement.	
	27.4.2	Commercial will take reasonable steps to ensure the reliability, integrity and trustworthiness of all of Commercial's employees with access to the Personal Data.	27.5.2.4 a process for regularly testing, assessing and evaluating the effectiveness of the security measures.
27.5	Security		
	27.5.1	Commercial must at all times implement appropriate technical and organisational measures against unauthorised or unlawful processing, access, copying, modification, reproduction, display or distribution of the Personal Data, and against accidental or unlawful loss, destruction, alteration, disclosure or damage of Personal Data. Commercial must document those measures in writing and periodically review them at least once every 6 months to ensure they remain current and complete.	27.6 Personal Data Breach
	27.5.2	Commercial must implement such measures to ensure a level of security appropriate to the risk involved, including as appropriate:	27.6.1 Commercial will immediately and in any event, without undue delay, notify the Customer if it becomes aware of:
	27.5.2.1	the pseudonymisation and encryption of personal data;	27.6.1.1 the loss, unintended destruction or damage, corruption, or unusability of part or all of the Personal Data. Commercial will restore such Personal Data at its own expense as soon as possible.
	27.5.2.2	the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;	27.6.1.2 any accidental, unauthorised or unlawful processing of the Personal Data; or
	27.5.2.3	the ability to restore the availability and access to personal data in a timely manner in the event of a	27.6.1.3 any Personal Data Breach.
			27.6.2 Where Commercial becomes aware of an event listed in clauses 27.6.1.1, 27.6.1.2 and/or 27.6.1.3 above, it shall, without undue delay, also provide the Customer with the following information:
			27.6.2.1 description of the nature of 27.6.1.1, 27.6.1.2 and/or 27.6.1.3, including the categories of in-scope Personal Data and the approximate number of both Data Subjects and the Personal Data records concerned;
			27.6.2.2 the likely consequences; and
			27.6.2.3 a description of the measures taken or proposed to be taken to address (a), (b) and/or (c), including measures to mitigate its possible adverse effects.

- 27.6.3 Immediately following any accidental, unauthorised or unlawful Personal Data processing or Personal Data Breach, the parties will co-ordinate with each other to investigate the matter. Further, Commercial will reasonably co-operate with the Customer at no additional cost to the Customer, in the Customer's handling of the matter, including but not limited to:
- 27.6.3.1 assisting with any investigation;
 - 27.6.3.2 providing the Customer with physical access to any facilities and operations affected;
 - 27.6.3.3 facilitating interviews with Commercial's employees, former employees and others involved in the matter including, but not limited to, its officers and directors;
 - 27.6.3.4 making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Legislation or as otherwise reasonably required by the Customer; and
 - 27.6.3.5 taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the Personal Data Breach or accidental, unauthorised or unlawful Personal Data processing.
- 27.6.4 Commercial will not inform any third party of any accidental, unauthorised or unlawful processing of all or part of the Personal Data and/or a Personal Data Breach without first obtaining the Customer's written consent, except when required to do so by domestic law.
- 27.6.5 Commercial agrees that the Customer has the sole right to determine:
- 27.6.5.1 whether to provide notice of the accidental, unauthorised or unlawful processing and/or the Personal Data Breach to any Data Subjects, the Commissioner, other in-scope regulators, law enforcement agencies or others, as required by law or regulation or in the Customer's discretion, including the contents and delivery method of the notice; and
 - 27.6.5.2 whether to offer any type of remedy to affected Data Subjects, including the nature and extent of such remedy.
- 27.6.6 Commercial will cover all reasonable expenses associated with the performance of the obligations under clause 27.6.11.1 to clause 27.6.11.3 unless the matter arose from the Customer's specific written instructions, negligence, wilful default or breach of this Agreement, in which case the Customer will cover all reasonable expenses.
- 27.6.7 Commercial will also reimburse the Customer for actual reasonable expenses that the Customer incurs when responding to an incident of accidental, unauthorised or unlawful processing and/or a Personal Data Breach to the extent that Commercial caused such breach, including all costs of notice and any remedy as set out in clause 27.6.5.
- 27.7 Cross-border transfers of personal data
- 27.7.1 Commercial (and any Subcontractor) must not transfer or otherwise process the Personal Data outside the UK and EEA without obtaining the Customer's prior written consent.

- 27.7.2 Where such consent is granted, Commercial may only process, or permit the processing, of the Personal Data outside the UK and EEA under the following conditions:
- 27.7.2.1 Commercial is processing the Personal Data in a territory which is subject to adequacy regulations under the Data Protection Legislation that the territory provides adequate protection for the privacy rights of individuals. Commercial must identify in the Proposal the territory that is subject to such adequacy regulations; or
- 27.7.2.2 Commercial participates in a valid cross-border transfer mechanism under the Data Protection Legislation, so that Commercial (and, where appropriate, the Customer) can ensure that appropriate safeguards are in place to ensure an adequate level of protection with respect to the privacy rights of individuals as required by Article 46 of the UK GDPR. Commercial must identify in the Proposal the transfer mechanism that enables the parties to comply with these cross-border data transfer provisions and Commercial must immediately inform the Customer of any change to that status; or
- 27.7.2.3 the transfer otherwise complies with the Data Protection Legislation for the reasons set out in the Proposal.
- 27.7.3 If any Personal Data transfer between the Customer and Commercial requires execution of SCC in order to comply with the Data Protection Legislation (where the Customer is the entity exporting Personal Data to Commercial outside the UK and EEA), the parties will complete all relevant details in, and execute, the SCC and take all other actions required to legitimise the transfer.
- 27.8 Subcontractors
- 27.8.1 Commercial may only authorise a third party (subcontractor) to process the Personal Data if:
- 27.8.1.1 the Customer provides written consent prior to the appointment of each subcontractor. For the avoidance of doubt, the Customer gives its consent for Commercial to appoint the Subcontractors;
- 27.8.1.2 Commercial enters into a written contract with the subcontractor that contains terms substantially the same as those set out in this Agreement, in particular, in relation to requiring appropriate technical and organisational data security measures, and, upon the Customer's written request, provides the Customer with copies of the relevant excerpts from such contracts;
- 27.8.1.3 Commercial maintains control over all of the Personal Data it entrusts to the subcontractor; and
- 27.8.1.4 the subcontractor's contract terminates automatically on termination of this Agreement for any reason.
- 27.8.2 Those subcontractors approved as at the commencement of this Agreement, updated and approved from time to time, and include any

	subcontractor's name and location and, where necessary, the contact information for the person responsible for privacy and data protection compliance.		automated processing of personal data, and restrict the processing of personal data; and
27.8.3	Where the subcontractor fails to fulfil its obligations under the written agreement with Commercial which contains terms substantially the same as those set out in this Agreement, Commercial remains fully liable to the Customer for the subcontractor's performance of its agreement obligations.		27.9.1.2 information or assessment notices served on the Customer by the Commissioner under the Data Protection Legislation.
27.8.4	The Parties agree that Commercial will be deemed to control legally any Personal Data controlled practically by or in the possession of its subcontractors.	27.9.2	Commercial must notify the Customer immediately in writing if it receives any complaint, notice or communication that relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Legislation.
27.8.5	On the Customer's written request, Commercial will audit a subcontractor's compliance with its obligations regarding the Personal Data and provide the Customer with the audit results. Where the Customer concludes reasonably that the subcontractor is in material default of its obligations regarding the Personal Data, the Customer may in writing instruct Commercial to instruct the subcontractor to remedy such deficiencies within 28 days.	27.9.3	Commercial must notify the Customer within 24 hours if it receives a request from a Data Subject for access to their Personal Data or to exercise any of their other rights under the Data Protection Legislation.
		27.9.4	Commercial will give the Customer, at no additional cost to the Customer, its full co-operation and assistance in responding to any complaint, notice, communication or Data Subject request.
		27.9.5	Commercial must not disclose the Personal Data to any Data Subject or to a third party other than in accordance with the Customer's written instructions, or as required by domestic law.
27.9	Complaints, data subject requests and third-party rights		
	27.9.1 Commercial must, at no additional cost to the Customer, take such technical and organisational measures as may be appropriate, and promptly provide such information to the Customer as the Customer may reasonably require, to enable the Customer to comply with:		
	27.9.1.1 the rights of Data Subjects under the Data Protection Legislation, including subject access rights, the rights to rectify, port and erase personal data, object to the processing and	27.10	Term and termination
		27.10.1	This Clause 27 will remain in full force and effect so long as:
		27.10.1.1	this Agreement remains in effect; or
		27.10.1.2	Commercial retains any of the Personal Data related to this Agreement in its possession or control (Term) .
		27.10.2	Any provision of this Clause 27 that expressly or by implication should

	come into or continue in force on or after termination of this Agreement in order to protect the Personal Data will remain in full force and effect.			requires Commercial to retain any documents or materials or Personal Data that Commercial would otherwise be required to return or destroy, it will notify the Customer in writing of that retention requirement, giving details of the documents, materials or Personal Data that it must retain, the legal basis for retention, and establishing a specific timeline for deletion or destruction once the retention requirement ends.
27.10.3	Commercial's failure to comply with the terms of this Clause 27 is a material breach of this Agreement. In such an event, the Customer may terminate any part of this Agreement involving the processing of the Personal Data effective immediately on written notice to Commercial without further liability or obligation of the Customer.		27.11.4	Commercial will certify in writing to the Customer that it has destroyed the Personal Data within 7 days after it completes the deletion or destruction.
27.10.4	If a change in any Data Protection Legislation prevents either party from fulfilling all or part of its Agreement obligations, the parties may agree to suspend the processing of the Personal Data until that processing complies with the new requirements. If the parties are unable to bring the Personal Data processing into compliance with the Data Protection Legislation within 14 days, either party may terminate this Agreement on not less than 10 working days on written notice to the other party.	27.12	Records	
			27.12.1	Commercial will keep detailed, accurate and up-to-date written records regarding any processing of the Personal Data, including but not limited to, the access, control and security of the Personal Data, approved subcontractors, the processing purposes, categories of processing, any transfers of personal data to a third country and related safeguards, and a general description of the technical and organisational security measures referred to in clause 27.5.1.
27.11	Data return and destruction			
27.11.1	At the Customer's request, Commercial will give the Customer, or a third party nominated in writing by the Customer, a copy of or access to all or part of the Personal Data in its possession or control in the format and on the media reasonably specified by the Customer.		27.12.2	Commercial will ensure that the Records are sufficient to enable the Customer to verify Commercial's compliance with its obligations under this Clause 27 and Commercial will provide the Customer with copies of the Records upon request.
27.11.2	On termination of this Agreement for any reason or expiry of its term, Commercial will securely delete or destroy or, if directed in writing by the Customer, return and not retain, all or any of the Personal Data related to this Agreement in its possession or control.	27.13	Audit	
27.11.3	If any law, regulation, or government or regulatory body		27.13.1	Commercial will permit the Customer and its third-party representatives to audit Commercial's compliance with its Clause 27 obligations, on at least 14 days' notice, during the Term. Commercial will give the Customer and its third-party representatives all necessary assistance to conduct

- such audits. The assistance may include, but is not limited to:
- 27.13.1.1 physical access to, remote electronic access to, and copies of the Records and any other information held at Commercial's premises or on systems storing the Personal Data;
 - 27.13.1.2 access to and meetings with any of Commercial's personnel reasonably necessary to provide all explanations and perform the audit effectively; and
 - 27.13.1.3 inspection of all Records and the infrastructure, electronic data or systems, facilities, equipment or application software used to store, process the Personal Data.
- 27.13.2 The notice requirements in clause 27.13.1 will not apply if the Customer reasonably believes that a Personal Data Breach occurred or is occurring, or Commercial is in breach of any of its obligations under this Agreement or any Data Protection Legislation.
- 27.13.3 If a Personal Data Breach occurs or is occurring, or Commercial becomes aware of a breach of any of its obligations under this Agreement or any Data Protection Legislation, Commercial will:
- 27.13.3.1 promptly, conduct its own audit to determine the cause;
 - 27.13.3.2 produce a written report that includes detailed plans to remedy any deficiencies identified by the audit;
 - 27.13.3.3 provide the Customer with a copy of the written audit report; and
- 27.13.3.4 remedy any deficiencies identified by the audit within 14 days.
- 27.13.4 At least twice a year, Commercial will conduct site audits of its Personal Data processing practices and the information technology and information security controls for all facilities and systems used in complying with its obligations under this Agreement, including, but not limited to, obtaining a network-level vulnerability assessment performed by a recognised third-party audit firm based on recognised industry best practices.
- 27.13.5 On the Customer's written request, Commercial will make all of the relevant audit reports available to the Customer for review.
- 27.13.6 Commercial will promptly address any exceptions noted in the audit reports with the development and implementation of a corrective action plan by Commercial's management.
- 27.14 Warranties
- 27.14.1 Commercial warrants and represents that:
- 27.14.1.1 its employees, subcontractors, agents and any other person or persons accessing the Personal Data on its behalf are reliable and trustworthy and have received the required training on the Data Protection Legislation;
 - 27.14.1.2 it and anyone operating on its behalf will process the Personal Data in compliance with the Data Protection Legislation and other laws, enactments, regulations, orders, standards and other similar instruments;
 - 27.14.1.3 it has no reason to believe that the Data

	Protection Legislation prevents it from providing any of this Agreement's contracted services; and		all direct costs, claims, damages or expenses incurred by the Customer or for which the Customer may become liable due to any failure by Commercial or its employees, subcontractors or agents to comply with any of its obligations under this Agreement or the Data Protection Legislation.
	27.14.1.4 considering the current technology environment and implementation costs, it will take appropriate technical and organisational measures to prevent the unauthorised or unlawful processing of Personal Data and the accidental loss or destruction of, or damage to, Personal Data, and ensure a level of security appropriate to:	27.16	Notice
	27.14.1.4.1 the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage;	27.16.1	Any notice or other communication given to a party under or in connection with this Agreement must be in writing and delivered to:
	27.14.1.4.2 the nature of the Personal Data protected; and	27.16.2	For the Customer: Registered Data Protection Officer
	27.14.1.4.3 comply with all applicable Data Protection Legislation and its information and security policies, including the security measures required in clause 27.5.1.	27.16.3	For Commercial: Tom Yoxall
27.14.2	The Customer warrants and represents that Commercial expected use of the Personal Data for the Proposal and as specifically instructed by the Customer will comply with the Data Protection Legislation.	28.	GENERAL
		28.1	Assignment. Unless explicitly stated in this Agreement, neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
		28.2	No partnership or agency. The parties are independent of each other and are not partners, principal and agent or employer and employee.
		28.3	Severance. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If that modification is not possible, the relevant provision or part-provision shall be deemed deleted.
		28.4	Variation. No variation of this Agreement shall be effective unless it is in writing and signed by both parties (or their authorised representatives).
		28.5	Waiver. A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or
27.15	Indemnification		
	27.15.1 Commercial agrees to indemnify, keep indemnified and defend at its own expense the Customer against		

restrict the further exercise of that or any other right or remedy.

- 28.6 **Rights of third parties.** 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.
- 28.7 **Entire agreement.** This Agreement constitutes the entire agreement between the parties, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter provided that the obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect in so far as there is no conflict with the Agreement. Nothing in this Agreement shall affect the validity of the non-disclosure agreement.
- 28.8 **Counterparts.** This Agreement may be executed in any number of counterparts by the parties, each of which when executed and delivered shall constitute an original, but all of which together shall constitute one and the same agreement. Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just the signature page) via email in PDF (or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. Whichever method is adopted, without prejudice to the validity of the Agreement, each party shall provide the others with the original counterpart as soon as is reasonably practicable thereafter.
- 28.9 **Governing law and jurisdiction.** Any claims or disputes under this contract will be governed and interpreted in accordance with the law of England and Wales. Both parties submit to the exclusive jurisdiction of the English and Welsh Courts.