



# PayaraTech LDA

## Payara Enterprise Agreement Terms and Conditions

The Customer as defined in the Enterprise Order (the "Customer").

PayaraTech LDA incorporated and registered in Portugal with company number PT515158674 whose registered office is at Rua Nova de São Pedro no 54, 2<sup>nd</sup> floor, room "D", 9000 048 Funchal, Ilha da Madeira, Portugal (the "Service Provider").

NOW IT IS AGREED as follows:

### 1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement, unless the context otherwise requires, the following terms shall have the following meanings.

1.1.1. "Charges" The fees payable by the Customer to the Service Provider for the Services, as set out in the Enterprise Order.

1.1.2. "Control" As defined in section 1124 of the Corporation Tax Act 2010.

1.1.3. "Customer System" The Customer's information technology infrastructure and system which shall include, but not be limited to servers, systems, networks, computers, work stations, virtual machines, tablet computers, mobile phones and/or smart phones.

1.1.4. "Support Contact" a named individual entitled to raise and view support tickets on behalf of the Customer.

1.1.5. "Migration and Project Support" Support Services and Software provided for testing, development and quality assurance purposes only.

1.1.6. "Effective Date" Commencement Date as set out in the Enterprise Order.

1.1.7. "Group Company" With respect to either party its ultimate holding company and any subsidiary of such holding company as such expressions are defined in Section 476 of the Companies Act 2006.

1.1.8. "Intellectual Property Rights" All vested contingent and future intellectual property rights including but not limited to copyright, trade marks, service marks, design rights, patents, know-how, trade secrets, inventions, get-up, goodwill, database rights (whether registered or unregistered) and any applications or registrations for the protection of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created.

1.1.9. "Production Support" Support Services provided for Software used in a production environment or otherwise for any production purposes.

1.1.10. "Software" The software, as more specifically detailed in the Enterprise Order, installed on the Customer's computer system that will be subject to the Support Services.

1.1.11. "Software Unit" A cpu core of the Customer System running the Software as defined in the Enterprise Order.

1.1.12. "Standard Support Hours" 8.00 am to 6.00 pm UK time Monday to Friday except on days which are bank holidays in England.

1.1.13. "Support Services" Those services set out in the Enterprise Order, which may be 10x5, 24x7 or Migration and Project Support.

1.1.14. "Enterprise Order" means the Sales Order to which these Terms are attached and into which these Terms are incorporated, which sets out the Software and Services provided;

1.1.15. "Unaffiliated Third Party" means a party that is not the Customer, is not part of a common group of companies or under common Control with the Customer, and does not share any investors or shareholders with the Customer.

1.1.16. "Working Days" means Monday to Friday except on days which are bank holidays in England.

1.2. In this Agreement unless the context otherwise requires:

1.2.1. words importing any gender include every gender;

1.2.2. words importing the singular number include the plural number and vice versa;

1.2.3. words importing persons include firms, companies and corporations and vice versa;

1.2.4. references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement;

1.2.5. references in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;

1.2.6. the headings to the clauses or schedules of this Agreement shall not affect the interpretation; and

1.2.7. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or bylaw made under that enactment.

1.3. The provisions of any Schedules to this Agreement shall form part of this Agreement as if set out here.

### 2. COMMENCEMENT AND DURATION

2.1. This Agreement shall form the contract between the Customer and the Service Provider in connection with the Support Services to be supplied.

2.2. This Agreement shall commence on the Effective Date and shall continue for the period described in the Enterprise Order.

### 3. THE SUPPORT SERVICES

3.1. The Service Provider shall supply, and the Customer shall take and pay for, the Support Services.

3.2. The Support Services shall commence on the Effective Date and (unless stated otherwise in the Enterprise Order) shall be provided during the Standard Support Hours.

3.3. The Support Service shall meet the service levels set out in the Enterprise Order.

3.4. Support Services will only be provided to the number of Support Contacts specified on the Enterprise Order;

3.4.1. the Customer may nominate alternative persons to be Support Contacts from time to time, but unless agreed otherwise by the Service Provider any such changes must not occur more frequently than once per month;

3.4.2. the Customer must not allow or suffer any authentication or identification credentials issued to a Support Contact to be used by more than one individual;

3.5. In the event the Customer purchases Migration and Project Support at the conclusion of the Migration and Project Support package or if the Customer uses the Software in a production environment or otherwise for any production purposes, the Customer agrees to purchase Production Support from the Service Provider pursuant to this Agreement by reference to the amount of Software Units installed on the Customer System.

3.6. The Service Provider may, on prior notice to the Customer, make changes to the Support Services, provided such changes do not have a material adverse effect on the Customer's business operations.

3.7. The Customer undertakes to purchase Production Support in a quantity equal to the total number of Software Units installed by the Customer and any Group Company, save that any Software Units installed by a Group Company which has entered a separate agreement for Support Services with the Service Provider shall be disregarded. If an Enterprise Order provides for Support Services to be provided to a Customer for an unlimited number of Software Units, such Support Services shall only be provided to the Customer and not to any Group Company of the Customer. If any Group Company of the Customer requires the provision of Support Services for an unlimited number of Software Units, such Group Company must enter a separate agreement with the Service Provider.

3.8. The Service Provider shall have no obligation to provide the Support Services where there arises:

3.8.1. misuse, incorrect use of or damage to the Software or Customer System from whatever cause (other than any act or omission by the Service Provider), including failure or fluctuation of electrical power;

3.8.2. use of the Software in combination with any equipment or software not designated by the Service Provider for use with the Software, or any fault in any such equipment or software;

3.8.3. any breach of the Customer's obligations under this Agreement or having the Software maintained by a third party;

3.8.4. any failure or fault with the Customer's software and/or systems, whether or not the subject of the Support Services; or

3.8.5. any modification to the Software not authorised by the Service Provider.

### 4. CHARGES

4.1. Charges are due and payable by reference to the amount of Software Units installed on the Customer System. When purchasing Payara Enterprise the Customer shall on each anniversary of the Effective Date report to the Service Provider the amount of Software Units currently installed on the Customer System. This will form the basis of the charges for the following 12 months.

4.2. Furthermore, and in addition to the above, the Customer will notify the Service Provider promptly and in any case within 20 Working Days if it installs any additional Software Units on the Customer System during the course of a year. In its notice, the Customer will include the number of additional Software Units installed on the Customer System and the date(s) on which such Software Units were first installed on the Customer System. The Service Provider shall invoice the Customer for the Charges for such additional Software Units at the end of the month following notification in accordance with this clause. The Charges for such additional Software Units shall be calculated pro-rata from the beginning of the month of notification to the end date of the period described in the Enterprise Order.

4.3. Furthermore, and for the avoidance of all doubt, if the number of Software Units on the Customer System is reduced during the course of a year, there shall be no rebate or return of any Charges already paid.

- 4.4. At any time during the term of this Agreement, and for a period of 1 year after its expiry or termination, howsoever effected, the Service Provider shall be entitled, upon giving not less than 20 Working Days' written notice to the Customer, to review the Customer's System and records in order to verify Customer's compliance with this Agreement, and in particular, clause 4.1 above.
- 4.5. If, following a review under clause 4.4 above, the Service Provider discovers that the Customer has underpaid the Charges due then it shall be entitled to invoice the Customer for such shortfall and such invoice will be payable in accordance with the terms of clause 4.1 above. Furthermore, should the review confirm that the Customer has underreported the amount of Software Units installed by more than 5% then the Service Provider shall be entitled to invoice the Customer for its costs in performing the review such invoice will be payable in accordance with the terms of clause 4.1 above
- 4.6. The Customer will pay any invoice raised by the Service Provider by no later than thirty (30) days from the date of invoice.
- 4.7. If the Customer fails to pay any amount payable by it under this Agreement, the Service Provider may charge the Customer interest on the overdue amount, payable by the Customer immediately on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 8% a year above the base rate for the time being of the Bank of England. Such interest shall accrue on a daily basis and be compounded quarterly.
- 4.8. All amounts payable under this Agreement shall be exclusive of VAT or relevant local sales taxes (if any) which shall be paid at the rate and in the manner for the time being prescribed by law.
- 4.9. The Customer may not withhold payment of any sum by reason of any set-off of any claim or dispute with the Service Provider whether relating to the quality or performance of the Support Services or otherwise.

#### **5. CUSTOMER'S RESPONSIBILITIES**

- 5.1. The Customer shall nominate a manager to be available to liaise with, and respond to queries from, the Service Provider.
- 5.2. The Customer shall:
- 5.2.1. co-operate with the Service Provider in performing the Support Services and provide any assistance, administrative support or information as may reasonably be required by the Service Provider, including in relation to the diagnosis of any faults;
- 5.2.2. take all reasonable steps to ensure that any defaults or misconfiguration identified by the Service Provider in respect of any Software are fixed as soon as is reasonably practicable;
- 5.2.3. have appropriate virus-checking and security procedures in place;
- 5.2.4. report faults promptly to the Service Provider; and
- 5.2.5. keep full backup copies of all of its data.
- 5.3. The Customer shall:
- 5.3.1. without prejudice to clause 4.1, maintain written records of the total number of Software Units installed by the Customer and any Group Company;
- 5.3.2. on request, make available to the Service Provider such records as are reasonably necessary to demonstrate the Customer's compliance with the obligation set out in clause 5.3.1, including but not limited to delivering to the Service Provider a report detailing the total number of Software Units and related information in a format chosen by the Service Provider.
- 5.4. If the Customer fails within 20 Working Days after the request referred to in clause 5.3.2 to make available to the Service Provider such records and reports as required under clause 5.3.2, or fails within the time period specified in a relevant notice to allow the Service Provider to review the Customer's System or records as required under clause 4.4, then without prejudice to the Service Provider's other rights and remedies:
- 5.4.1. the total number of Software Units installed by the Customer and any Group Company will be deemed to be unlimited;
- 5.4.2. the Service Provider may immediately raise an invoice in that respect;
- 5.4.3. the sums invoiced will become due on the date of such invoice; and
- 5.4.4. Customer shall pay such invoice within 28 days of its date of issue.
- 5.5. The Customer shall:
- 5.5.1. use the Support Services in accordance with and subject to the terms and conditions of this Agreement;
- 5.5.2. use the Software in accordance with the Software End User License Agreement;
- 5.5.3. use the Support Services solely for its own internal business operations; and
- 5.5.4. without prejudice to the generality of clause 5.5.1, not use the Support Services to provide support to any third party without the prior written consent in each case of the Service Provider.
- 5.6. The Customer shall indemnify the Service Provider against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Service Provider as a result of the Customer's breach of this Agreement or any negligent or wrongful act of the Customer, its officers, employees, contractors or agents.

#### **6. INTELLECTUAL PROPERTY RIGHTS**

- 6.1. Neither party is granted any right, title or licence to, or interest in the other party's Intellectual Property Rights, provided however that one party may refer to the Software by the other party's Intellectual Property Rights so long as such references are truthful and not misleading.
- 6.2. Each party acknowledges the other party's rights in such other party's Intellectual Property Rights and agrees that any and all use by it of such Intellectual Property Rights shall inure to the sole benefit of the other party.
- 6.3. Neither party shall take any action inconsistent with the other party's ownership of its Intellectual Property Rights and agrees not to challenge the other party's ownership or use of such Intellectual Property Rights and further agrees not to attempt to register any such Intellectual Property Rights, owned or used by the other party or any other names or marks confusingly similar thereto.
- 6.4. If at any time a party acquires any rights in, or any registration or application for any of the other party's Intellectual Property Rights by operation of law or otherwise it shall immediately upon request by the other party and at no expense to the other party assign such rights, registration or applications to the other party, along with any associated goodwill.
- 6.5. The Customer is not given any right to use the Service Provider's trademarks. The Customer shall ensure that the Service Provider's trademarks are removed prior to the distribution of any Software, documents, or any other materials which contain the Service Provider's trademarks.

#### **7. LIMITATION OF LIABILITY**

- 7.1. The Service Provider does not exclude liability for:
- 7.1.1. death, personal injury or damage to tangible property caused by the negligence of the Service Provider, its officers, employees, contractors or agents;
- 7.1.2. fraud or fraudulent misrepresentation;
- 7.1.3. deliberate repudiatory breach; or
- 7.1.4. any other liability which cannot be excluded by law.
- 7.2. Subject to Clause 7.1, in no event shall the Service Provider be liable for any damages resulting from loss of data or use, lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of the Service Provider whether such damages were reasonably foreseeable or actually foreseen.
- 7.3. Subject to Clause 7.1, in no event shall the Service Provider be liable for any damages or loss arising from any delay by the Customer to provide its instructions to the Service Provider, including but not limited to any delay to provide any written obligation as required under the terms of this Agreement.
- 7.4. Subject to Clause 7.1, the Service Provider's maximum liability to the Customer for any cause whatsoever (whether in the form of a refund, the additional cost of remedial services, or otherwise) shall be for direct costs and damages only, and shall be limited to a sum equivalent to the price paid to the Service Provider under this Agreement for the Support Services that are the subject of the Customer's claim.
- 7.5. In no event shall the Service Provider be liable to the Customer for any losses whatsoever (whether lost future revenues, lost future profits, expenditure incurred to no benefit, or otherwise) suffered or incurred by the Customer solely or substantially because this Agreement has been terminated.
- 7.6. The Customer agrees that, in entering into this Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this Agreement) that it shall have no remedy in respect of such representations and (in either case) the Service Provider shall have no liability otherwise than in accordance with the express terms of this Agreement.
- 7.7. All liability that is not expressly assumed in this Agreement is hereby excluded. These limitations shall apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this clause 'the Service Provider' includes its employees, sub-contractors and suppliers. The Customer acknowledges that the Service Provider's employees, sub-contractors and suppliers shall have the benefit of the limits and exclusions of liability set out in this clause in terms of the Contracts (Rights of Third Parties) Act 1999.
- 7.8. Both parties acknowledge and agree that the limitations and exclusions of liability set out in this clause are proportionate and reasonable and have been agreed taking into account the commercial value of this Agreement to each party and the commercial standing of each party.
- 7.9. No claim or action, regardless of form, arising out of this Agreement may be brought by either party more than two years after the cause of action has accrued.

#### **8. WARRANTIES**

- 8.1. The Service Provider warrants that:

- 8.1.1. all Support Services shall be performed by adequately qualified and trained personnel, with due care and diligence and to standards appropriate to the industry;
- 8.1.2. all Support Services shall comply with all applicable statutory and legal requirements but shall not be similarly liable to those applicable to the Customer unless the Customer notifies the Service Provider in writing of such statutory and legal requirements and regulations;
- 8.1.3. at the date of this Agreement, the Service Provider has obtained and shall maintain for the duration of this Agreement all permissions, licences and consents necessary for the Service Provider to perform the Support Services.
- 8.1.4. the Service Provider shall take reasonable commercial efforts in accordance with appropriate security practice to maintain sufficient technical and organisational measures to ensure the security and integrity of its computer and other information systems to prevent the authorised disclosure, copying or use of confidential information or personal data; and
- 8.1.5. the Service Provider shall act only on the instructions of the Customer in respect of any personal data that it processes on behalf of the Customer.
- 8.2. If, during the term of this Agreement, the Service Provider receives written notice from the Customer of any breach by the Service Provider of the warranties contained in clause 8.1 the Service Provider shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice, or terminate this Agreement immediately on written notice to the Customer and repay to the Customer all sums which the Customer has paid to the Service Provider under this Agreement during the year in which the termination occurs, less a charge for the Support Services performed up to the date of termination. The Customer shall provide all information reasonably necessary to enable the Service Provider to comply with its obligations under this clause 8.3. This clause sets out the Customer's sole remedy and the Service Provider's entire liability for breach of clause 8.1.
- 8.3. The express warranties set out in this Agreement are the Service Provider's sole warranties with respect to the Support Services provided by the Service Provider under this Agreement. The Service Provider disclaims all other warranties, terms and conditions express or implied, including any warranties, terms or conditions of satisfactory quality or fitness for any particular purpose.

## **9. CONFIDENTIALITY**

- 9.1. For the term of this Agreement and thereafter, all information of a technical or business nature disclosed by one party to the other either before or after the date of this Agreement in connection with any Software or Support Services or business dealings between the parties shall be regarded as confidential ('Confidential Information') and shall only be disclosed as is strictly necessary and each party shall procure that its personnel and third parties to which Confidential Information is disclosed treat such information as confidential. Such information shall be used only for the purpose for which it was disclosed and for carrying out the purposes of this Agreement and shall not without prior written consent of the disclosing party be disclosed to any third party provided that either party may disclose without consent any Confidential Information:
- 9.1.1. to its sub-contractors for the operation of the Customer System or the provision of the Software or Support Services provided that such disclosures is on a 'need to know' basis only and the sub-contractor undertakes to keep such Confidential Information confidential; or
- 9.1.2. as required to be disclosed to any governmental and/or regulatory authority; or
- 9.1.3. to any Group Company.
- 9.2. Information shall not be deemed to be Confidential Information where it:
- 9.2.1. is authorised to be disclosed by the disclosing party to the extent of the authority given; or
- 9.2.2. is made public by the disclosing party or is or becomes part of the public domain other than by the default of the receiving party; or
- 9.2.3. is in the possession of or is known by the receiving party without any obligation to keep it confidential prior to its receipt from the disclosing party; or
- 9.2.4. is subsequently rightfully obtained by the receiving party from a third party; or
- 9.2.5. is independently developed by the receiving party.
- 9.3. Any Confidential Information referred to in clause 9.1 shall remain the property of the disclosing party and shall be returned by the receiving party to the disclosing party if so requested.
- 9.4. The terms of this Agreement may not be disclosed by the Customer (other than to its legal advisors) without the prior written consent of the Service Provider.
- 9.5. The Service Provider may cite the Customer's name and the general nature of the services performed to its other clients or prospective clients as an indication of its experience, and may also include such information and any identifying mark or logo of the Customer on its website, unless agreed otherwise and set out in the Enterprise Order.

## **10. DATA PROTECTION**

- 10.1. Where the Service Provider, or any of its sub-contractors, as part of the fulfilment of its obligations under this Agreement, processes personal data as a data processor on behalf of the Customer, the parties agree to comply with the data processing terms set out in Schedule A.

## **11. NON SOLICITATION**

- 11.1. Each party agrees that, during the life of this Agreement and for a period of 12 months thereafter, neither it by itself, its officers, employees or agents or otherwise howsoever and whether as a consultant, principal, partner, director, employee or otherwise, shall employ or solicit the services of any employee, officer, agent or consultant of the other party (or, as the case may be, of any Group Company) who was engaged and/or involved in providing or receiving the Support Services.

## **12. TERMINATION**

- 12.1. Either party shall be entitled to terminate this Agreement without liability to the other party by giving notice to the other party at any time if:
- 12.1.1. that other party is in material breach of this Agreement, provided that if the breach is capable of remedy the innocent party shall not be entitled to terminate this Agreement unless and until the breaching party shall have failed to remedy the breach within fourteen days of such notice;
- 12.1.2. that other party makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or becomes subject to an administration order or goes into liquidation otherwise than for the purpose of amalgamation or reconstruction; or
- 12.1.3. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of that other party; or
- 12.1.4. that other party ceases, or threatens to cease, to carry on business; or
- 12.1.5. the Customer or the Service Provider reasonably apprehends that any of the events mentioned above is about to occur in relation to the other party and notifies the other party accordingly.
- 12.2. The Service Provider may, without prejudice to its other rights or remedies, terminate this Agreement immediately by notice to the Customer if the Customer undergoes a change of Control which does not result in Control passing to a company that, immediately before the change in question, was an affiliate of the Customer.
- 12.3. On termination of this Agreement for any reason the Service Provider shall promptly refund such portion of the Charges as relates to the period after expiry or termination on a pro rata basis.

## **13. EFFECTS OF TERMINATION**

- 13.1. Other than as set out in this Agreement, neither party shall have any further obligation to the other under this Agreement after its termination.
- 13.2. 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.
- 13.3. Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 13.4. Notwithstanding its obligations in this clause 13, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.
- 13.5. On termination of this Agreement for any reason, the Customer's right to receive the Support Services shall cease automatically and each party shall as soon as reasonably practicable:
- 13.6. return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party;
- 13.7. return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, shall be solely responsible for their safe-keeping.
- 13.8. For the avoidance of doubt, on termination of this Agreement for any reason, the Customer may continue to use the Software in accordance with the applicable End User License Agreement and need not return any materials solely containing the Software.
- 13.9. On termination of this Agreement for any reason, the Customer shall immediately pay any outstanding unpaid invoices and interest due to the Service Provider. The Service Provider shall submit invoices for any Support Services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.

## **14. FORCE MAJEURE**

- 14.1. Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance

of this Agreement which result from circumstances beyond the reasonable control of that party. In particular, the Service Provider shall not be liable for any delay in or failure to provide the Support Services arising from any default in or failure of the Customer System or any telecommunications failure (unless resulting from the act, omission or negligence of the Service Provider).

- 14.2. If the circumstances set out in Clause 14.1 continue for a continuous period of more than 6 months, either party may terminate this Agreement by written notice to the other party.

## **15. MISCELLANEOUS**

- 15.1. This Agreement together with any subsequent amendments supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Agreement. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.
- 15.2. This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.
- 15.3. This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties.
- 15.4. This Agreement is personal to the parties and may not be assigned by either party without the prior written approval of the other party. Notwithstanding the foregoing, either party may assign this Agreement to any acquirer of all or of substantially all of such party's enquiry securities, assets or business relating to the subject matter of this Agreement or to any entity controlled by, that controls, or is under common control with a party to this Agreement.
- 15.5. If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.
- 15.6. No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement.
- 15.7. The parties confirm their intent (subject to any provisions in this Agreement to the contrary) not to confer any rights on any third parties by virtue of this Agreement and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.
- 15.8. This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.
- 15.9. All notices under this Agreement shall be in writing.
- 15.10. Notices shall be deemed to have been duly given:
- 15.10.1. when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
- 15.10.2. when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or
- 15.10.3. on the fifth Working Day following mailing, if mailed by national ordinary mail, postage prepaid; or
- 15.10.4. on the tenth Working Day following mailing, if mailed by airmail, postage prepaid,
- 15.10.5. in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other party.

## **16. PROPER LAW AND JURISDICTION**

- 16.1. 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 construed in accordance with the law of England and Wales.
- 16.2. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).
- 16.3. For the avoidance of doubt nothing in this clause 16 shall limit the right of either party to take any action or proceedings in any other jurisdiction to the extent permitted by law, nor shall the taking of proceedings in any jurisdiction preclude either of the parties from taking proceedings in any other jurisdiction.

## Schedule A:

### 1 DATA PROCESSING TERMS

#### Interpretation

1.1 The following definitions apply in this Schedule A:

**Access Requests:** requests made by a data subject to exercise any rights of data subjects under the Data Laws in relation to Disclosed Data.

**Appropriate Safeguards:** such legally enforceable mechanism(s) for transfers of Disclosed Data as may be permitted under the Data Laws from time to time.

**Disclosed Data:** any information relating to a data subject received by the Service Provider from or on behalf of the Customer in connection with the performance of the Service Provider's obligations under this agreement.

**Controller:** has the meaning given to that term (or the term 'data controller') in the Data Laws.

**Data Breach:** any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Disclosed Data.

**Data Laws:** the Data Protection Act 2018 and the General Data Protection Regulation, any amendment, replacement or re-enactment thereof, and any statutes or regulations made thereunder.

**data subject:** an identified or identifiable natural person.

**Processor:** has the meaning given to that term (or the term 'data processor') in the Data Laws.

**Relevant Data Protection Legislation:** means any data protection or privacy laws and regulations which apply to the Customer's business.

**Sub-Processor:** another Processor engaged by the Service Provider for carrying out processing activities in respect of Disclosed Data on behalf of the Customer.

1.2 Schedule A shall survive termination or expiry of this agreement and continue:

1.2.1 indefinitely in the case of clauses 1.1, 1.2, 1.15 and 1.16; and

1.2.2 until 12 months following the termination or expiry of this agreement in the case of all other clauses of Schedule A.

#### Controller and Processor

1.3 The parties acknowledge that the Customer is the Controller and the Service Provider is the Processor in respect of any Disclosed Data.

1.4 The Service Provider shall process the Disclosed Data:

1.4.1 in compliance with the obligations of Processors under the Data Laws;

1.4.2 in accordance with the terms of this agreement.

1.5 The Customer warrants that:

1.5.1 it shall comply with all Relevant Data Protection Legislation in connection with the processing of Disclosed Data and the exercise and performance of its rights and obligations under this agreement;

1.5.2 all Disclosed Data to be used in connection with the Support Services, prior to such data being provided to the Service Provider, shall comply in all respects with the Relevant Data Protection Legislation;

1.5.3 all instructions given by the Customer to the Service Provider in respect of the Disclosed Data shall be in accordance with the Relevant Data Protection Legislation; and

1.5.4 it is satisfied that the Service Provider's processing operations are suitable to able the Service Provider to process Disclosed Data, and the Service Provider has sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of the Relevant Data Protection Legislation.

#### Instructions and details of processing

1.6 Where the Service Provider processes Disclosed Data on the Customer's behalf, the Service Provider shall:

1.6.1 process the Disclosed Data only in accordance with the Customer's documented instructions (unless required to do otherwise by the Data Laws);

1.6.2 notify the Customer if the Data Laws requires the Service Provider to process Disclosed Data other than in accordance with the Customer's documented instructions; and

1.6.3 notify the Customer if the Service Provider believes that an instruction infringes the Data Laws.

1.7 The Service Provider's processing of Disclosed Data shall consist of:

1.7.1 Subject matter as detailed in the Enterprise Order

1.7.2 relating to Subjects as detailed in the Enterprise Order

1.7.3 which shall be processed for the duration of this agreement; and

1.7.4 for the purposes detailed in the Enterprise Order

#### Technical and organisational measures

1.8 The Service Provider shall implement and maintain appropriate technical and organisational measures:

1.8.1 in relation to the processing of Disclosed Data by the Service Provider; and

1.8.2 taking into account the nature of the processing, to assist the Customer insofar as is possible in the fulfilment of the Customer's obligations to respond to Access Requests relating to Disclosed Data.

#### Using staff and other processors

1.9 The Service Provider shall:

1.9.1 not engage any Sub-Processor for carrying out any processing of Disclosed Data without the Customer's authorisation;

1.9.2 appoint Sub-Processors only under a written contract containing materially the same obligations as in Schedule A; and

1.9.3 ensure that all personnel of the Service Provider authorised to process Disclosed Data are subject to binding written contractual obligations to keep the Disclosed Data confidential (except where disclosure is required in accordance with the Data Laws).

#### Assistance with Customer's compliance and data subject rights

1.10 The Service Provider shall refer all Access Requests it receives to the Customer without undue delay.

1.11 the Service Provider shall provide such reasonable assistance as the Customer reasonably requires (taking into account the nature of processing and the information available to the Service Provider) to the Customer in ensuring compliance with the Customer's obligations under Data Laws with respect to:

1.11.1 security of processing;

1.11.2 data protection impact assessments;

1.11.3 prior consultation with a supervisory authority regarding high-risk processing; and

1.11.4 notification to the supervisory authority and/or communications to data subjects by the Customer in response to a Data Breach; provided the Customer shall pay the Service Provider for providing the assistance on a time and materials basis in accordance with the Service Provider's then-current standard hourly rates.

#### International data transfers

1.12 The Customer agrees that the Service Provider may transfer Disclosed Data: as described in the Enterprise Order provided all such transfers shall (to the extent required by Data Laws) be protected by way of Appropriate Safeguards and be in accordance with Data Laws. The provisions of Schedule A shall be the Customer's documented instructions.

#### Records, information and audit

1.13 The Service Provider shall, in accordance with Data Laws:

1.13.1 maintain written records of all categories of processing activities carried out on behalf of the Customer; and

1.13.2 make available to the Customer such information as is reasonably necessary to demonstrate the Service Provider's compliance with the obligations of Processors under Data Laws, and allow for and contribute to audits, including inspections, by the Customer for this purpose, subject to the Customer:

1.13.2.1 giving the Service Provider reasonable prior notice of such information request, audit and/or inspection being required by the Customer;

1.13.2.2 ensuring that all information obtained or generated by the Customer in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the supervisory authority or as otherwise required by applicable laws);

1.13.2.3 ensuring that such audit or inspection is undertaken during the Service Provider's normal business hours with minimal disruption to the Service Provider or any Sub-Processor's business; and

1.13.2.4 paying the Service Provider for assisting with the provision of information and allowing for and contributing to inspections and audits on a time and materials basis in accordance with the Service Provider's then-current standard hourly rates.

#### Breach notification

1.14 In respect of any Data Breach involving Disclosed Data, the Service Provider shall promptly notify the Customer, and provide the Customer with details, of the Data Breach.

Deletion or return of Disclosed Data

1.15 The Service Provider shall, at the Customer's written request, either delete or return all the Disclosed Data to the Customer in such form as the Customer reasonably requests within a reasonable time after the earlier of:

1.15.1 the end of the performance of the relevant services; or

1.15.2 once processing by the Service Provider of any Disclosed Data is no longer required for the purposes of this agreement; and the Service Provider shall delete existing copies (unless storage of any data is required by applicable laws, or unless the Service Provider is a Controller in relation to that data at the relevant time).

1.16 The Service Provider acknowledges that the Disclosed Data is the confidential information of the Customer.