



# Novation and Variation Agreement

This Deed of Novation and Variation is dated 12 July 2023, by and between:

1. Everyone TV Devices Limited (formerly **Freesat (UK) Ltd**), a company registered in England under number 6250097 and whose registered office is at 23-24 Newman Street, London, W1T1PJ, United Kingdom ("**ETVDL**", "**Continuing Party**")
2. **Alchemetrics Limited**, a company registered in England under number 3124263 whose registered office is at West Tithe, Pury Hill Business Park, Alderton Road, Towcester, Northants, NN12 7LS ("**Alchemetrics**", "**Outgoing Party**") and
3. **Xtremepush Limited**, a company registered in Ireland under number 538746 and whose registered office is at 34-37 Clarendon Street, Dublin 2, Ireland ("**Xtremepush**", "**Incoming Party**").

Singularly a "Party" and collectively "the Parties".

## RECITALS:

**Whereas**, the Continuing Party and the Outgoing Party are parties to a Data Services Agreement dated 11.12.2017 (as amended from time to time, the "Agreement").

**Whereas**, the Outgoing Party desires to be released and discharged from the further performance of obligations under the Agreement and the Continuing Party is willing to comply with such request upon terms that the Incoming Party shall undertake to perform such obligations and be bound by the terms of the Agreement in lieu of the Outgoing Party.

**Whereas**, the parties have therefore agreed to novate the Outgoing Party's rights, obligations and liabilities under the Agreement to the Incoming Party on the terms of this agreement with effect from July 1, 2023 (the "**Effective Date**").

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and with the intent to be legally bound, the Parties hereby agree as follows:

## 1. NOVATION

With effect from the Effective Date:

- a. The Outgoing Party transfers all its rights and obligations under the Agreement to the Incoming Party.
- b. The Incoming Party shall enjoy all the rights and benefits of the Outgoing Party under the Agreement. The Incoming Party agrees to perform the Agreement and be bound by its terms (including its liabilities) in every way as if it were the original party to it in place of the Outgoing Party.
- c. The Continuing Party agrees to perform the Agreement and be bound by its terms in every way as if the Incoming Party were the original party to it in place of the Outgoing Party.



- d. All references to the Outgoing Party in the Agreement shall be read and construed as references to the Incoming Party.

## 2. RELEASE OF OBLIGATIONS

- a. Nothing in this agreement shall affect or prejudice any claim or demand that the Continuing Party or the Outgoing Party may have against each other under or in connection with the Agreement with respect to matters occurring before the Effective Date.

## 3. FURTHER ASSURANCE

- a. Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, execute and deliver such documents and perform such acts as may reasonably be required to give full effect to this agreement.

## 4. COUNTERPARTS

- a. The Parties may execute this agreement in any number of counterparts, each of which when executed and delivered will be an original but all of which when taken together will constitute one agreement.

## 5. ENTIRE AGREEMENT

- a. This agreement contains the whole agreement between the Parties in relation to the matters contemplated by this agreement and supersede any previous agreements (whether oral or in writing) between the Parties in relation to such matters.

## 6. VARIATION

The Parties hereby agree to the following variations to the Agreement:

- a. All of original clause 14 to be replaced as follows:

**Data Protection:** To the extent that any Personal Data is Processed (as defined in Schedule A) by Xtremepush on behalf of ETVDL in connection with the provision of the Services or otherwise, the provisions set out in Schedule A shall apply to such processing.

**A Aggregated Network-Level Statistics:** ETVDL hereby consents to Xtremepush using ETVDL ' information (including Personal Data and information about the ETVDL's use of the Services or ETVDL applications) for Xtremepush's own purposes, as long as such information is processed into aggregated, non-personally identifiable, information.

**B Disclosure of Information:** Xtremepush may disclose some of ETVDL's and its Customers' personal information to relevant affiliates, partner or other third parties who contract with Xtremepush, in order to provide portions of Xtremepush's service, and ETVDL hereby consents to such disclosure.

**C Newsletter:** Occasionally Xtremepush may send ETVDL a newsletter with relevant information and developments relating to the Services. ETVDL may opt-out at any time from Xtremepush's newsletter.



**D Third party services:** Xtremepush uses specific third-party services including but not limited to Google Cloud Messaging, Apple, Amazon and Stripe. ETVDL acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Xtremepush makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by ETVDL, with any such third party. Any contract entered into and any transaction completed via any third-party website is between ETVDL (or its Customers) and the relevant third party, and not Xtremepush. Xtremepush recommends that ETVDL refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Xtremepush does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

b. Schedule A - Data Protection - to be added (see Schedule A)

c. 16.1 to be replaced as follows:

Subject to Clause 16.2 this Agreement will commence on 1st July 2023 and shall continue for a period of one year (the 'Initial Term'). Thereafter the Agreement will continue unless or until a party notifies the other in writing of termination of this Agreement at any time with six (6) months' prior written notice (the 'Extended Term').

6.1. For the avoidance of doubt, all capitalised terms in this clause shall have the meanings ascribed to them in clause 1 of the Agreement.

## 7. SUCCESSORS

a. This agreement shall be binding on and ensure to the benefit of the lawful successors and permitted assigns of each Party.

## 8. GOVERNING LAW AND JURISDICTION

a. This agreement shall be subject to the laws agreed to be applicable to the Agreement and in case of any conflict or dispute under this agreement, this will be resolved before the competent courts as stipulated in the Agreement or if applicable in accordance with the arbitration rules specified in the Agreement.



DocuSigned by:  
*Eric Mitchell*  
.....6F7575E1BA0A490.....

For and on behalf of

**Everyone TV Devices Limited**

Print Name: Eric Mitchell

Designation: CFO

Date: 12 July 2023

DocuSigned by:  
*Elsa Ebbersten*  
.....A26D5528BEE04BD.....

For and on behalf of

**Alchemetrics Limited**

Print Name: Elsa Ebbersten

Designation: Director of Operations

Date: 11 July 2023

DocuSigned by:  
*Emma Thwaites*  
.....19C8A87591D5435.....

For and on behalf of

**Xtremepush Limited**

Print Name: Emma Thwaites,

Designation: Head of Strategic Accounts

Date: 12 July 2023



## Schedule A

### Data Processing Provisions

#### 1. Definitions and Interpretation

1.1 The following definitions and rules of interpretation apply in this Agreement (including in the Recitals).

**Appropriate Technical and Organisational Measures:** has the meaning given to such term in Data Protection Legislation (including, as appropriate, the measures referred to in Article 32(1) of the GDPR).

**Authorised Person:** the persons authorised by ETVDL to give the Supplier instructions in respect of Processing being Data Privacy [dataprivacy@freeview.co.uk](mailto:dataprivacy@freeview.co.uk), as amended from time to time in accordance with this Agreement.

**Business Day:** a day other than a Saturday, Sunday or public holiday in Ireland or the United Kingdom when banks are open for business.

**Business Purpose:** the provision of the Services (as defined in the Agreement).

**Customer:** end users of ETVDL, and each a **Customer**;

**Data:** any data or information, in whatever form, including but not limited to images, still and moving, and sound recordings.

**Data Controller:** has the meaning given to such term in Data Protection Legislation.

**Data Processor:** has the meaning given to such term in Data Protection Legislation.

**Data Protection Legislation:** means the Data Protection Acts 1988 and 2003 and Directive 95/46/EC, any other applicable law or regulation relating to the Processing of Personal Data and to privacy (including the E-Privacy Directive), as such legislation shall be amended, revised or replaced from time to time, including by operation of the GDPR (and laws implementing or supplementing the GDPR).

**Data Protection Officer:** a data protection officer appointed pursuant to Data Protection Legislation.

**Data Subject:** an individual who is the subject of Personal Data.

**Delete:** to remove or obliterate Personal Data such that it cannot be recovered or reconstructed.

**EEA:** European Economic Area.

**ETVDL Data:** ETVDL Data (NPD) and ETVDL Data (PD).

**ETVDL Data (NPD):** all Data supplied by ETVDL to the Supplier from time to time other than ETVDL Data (PD) during the Term.

**ETVDL Data (PD):** the Personal Data supplied by ETVDL to the Supplier or access by the Supplier (in respect of ETVDL' personnel or its Customers) from time to time during the Term.

**ETVDL System:** any information technology system or systems owned or operated by ETVDL from which ETVDL Data is accessed or received by the Supplier in accordance with this Agreement.

**GDPR:** General Data Protection Regulation (EU) 2016/679.



**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Material Breach:** substantial (non-trivial) failure of performance under the Agreement which is significant enough to give the aggrieved Party the right to sue for breach of contract.

**Normal Business Hours:** 9.00 am to 5.00 pm GMT on a Business Day.

**ODPC:** Office of the Data Protection Commissioner, Canal House, Station Road, Portarlinton, Co. Laois, R32 AP23, Ireland.

**Personal Data:** has the meaning set out in Data Protection Legislation and relates only to personal data, or any part of such personal data, in respect of which ETVDL is the Data Controller, and in respect of which the Supplier is the Data Processor under this Agreement.

**Personal Data Breach:** means any "personal data breach" as defined in the GDPR in respect of the Personal Data caused by the Supplier.

**Processed Data:** any ETVDL Data that has been Processed.

**Processing:** has the meaning given to such term in Data Protection Legislation, and **Processed** and **Process** shall be interpreted accordingly.

**Representatives:** a Party's employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services.

**Restricted Transfer:** any transfer of Personal Data to countries outside of the EEA which are not subject to an adequacy decision by the European Commission, where such transfer would be prohibited by Data Protection Legislation.

**Security Features:** any security feature, including any encryption, pseudonymisation, key, PIN, password, token or smartcard.

**Services:** the Processing of ETVDL Data by the Supplier for the Business Purpose.

**Specific Instructions:** instructions meeting the criteria set out in Clause 2.2.

**Standard Contractual Clauses:** the contractual Clauses dealing with the transfer of Personal Data outside the EEA, which have been approved by (i) the European Commission under Data Protection Legislation, or (ii) by the ODPC or an equivalent competent authority under Data Protection Legislation.

**Sub-processor:** has the meaning given to such term in Clause 15.1.

**Supplier System:** any information technology system or systems owned or operated by the Supplier to which ETVDL Data is delivered or accessed or on which the Services are performed in accordance with this Agreement.

**Term:** the duration of the Agreement.

## 2. Services



- 2.1 In consideration of the mutual obligations set out herein, during the Term the Supplier shall supply the Services to ETVDL. ETVDL hereby grants a non-exclusive, non-transferrable, non-sub licensable (other than to the Supplier's affiliates) licence to the Supplier to the use of all copyright and database rights in ETVDL Data for the duration of the Term to enable the Supplier to provide the Services, and to transfer to the Supplier all ETVDL Data for the same purpose, in accordance with the terms of this Agreement.
- 2.2 The Supplier shall not act on any specific instructions given by ETVDL from time to time during the Term unless they are:
  - 2.2.1 in writing (including by electronic means; and
  - 2.2.2 given by an Authorised Person.
- 2.3 The Supplier shall Process ETVDL Data (PD) for the Business Purpose only and in compliance with ETVDL' instructions from time to time, which may be:
  - 2.3.1 Specific Instructions; or
  - 2.3.2 the general instructions set out in the Agreement unless required to do otherwise by law, in which case, where legally permitted, the Supplier shall inform ETVDL of such legal requirement before Processing.
- 2.4 The types of Personal Data to be Processed pursuant to this Agreement shall include (but shall not be limited to) names, email addresses, analytical information regarding use, information related to browsing habits, IP addresses, device IDs, location data, and phone numbers; and the categories of Data Subject to whom such Personal Data relates shall include ETVDL' personnel and Customers.

### **3. Access**

- 3.1 The Supplier shall have access to the Personal Data which is uploaded by ETVDL personnel or Customers to the Supplier's System or which is automatically gathered/collected by the Supplier on the Supplier's System or ETVDL' System for the purposes of providing the Services, as set out in the Agreement.

### **4. Parties' Obligations**

- 4.1 The Supplier shall:
  - 4.1.1 only make copies of ETVDL Data to the extent reasonably necessary for the Business Purpose (which, for clarity, includes back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing of ETVDL Data); and
  - 4.1.2 not extract, reverse-engineer, re-utilise, use, exploit, redistribute, re-disseminate, copy or store ETVDL Data other than for the Business Purpose.
- 4.2 The Supplier shall notify ETVDL in writing without delay of any situation or envisaged development that shall in any way change the ability of the Supplier to Process ETVDL Data (PD) as set out in this Agreement.
- 4.3 The Supplier shall, at ETVDL' cost and taking into account the nature of the Supplier's Processing of Personal Data, promptly comply with any written request from ETVDL requiring the Supplier to amend, transfer or Delete any of ETVDL Data. In the event of a request to Delete ETVDL Data, the Supplier shall be entitled to keep one archived copy of ETVDL Data for such period as it is legally possible for ETVDL to make a claim against the Supplier in respect of the Agreement and/or the Services, plus one additional year.
- 4.4 At ETVDL' request and cost, the Supplier shall provide to ETVDL a copy of all ETVDL Data held by the Supplier in a commonly used format.
- 4.5 At ETVDL' request and cost, taking into account the nature of the Supplier's Processing of the Personal Data and the information available, the Supplier shall provide to ETVDL such information and such assistance as ETVDL may reasonably require, and within the timescales reasonably specified by ETVDL, to allow ETVDL to comply with its obligations under Data Protection Legislation, including but not limited to assisting ETVDL to:
  - 4.5.1 comply with its own security obligations with respect to the Personal Data;
  - 4.5.2 discharge its obligations to respond to requests for exercising Data Subjects' rights with respect to the Personal Data;
  - 4.5.3 comply with its obligations to inform Data Subjects about serious Personal Data Breaches;
  - 4.5.4 carry out data protection impact assessments and audit data protection impact assessment compliance with respect to the Personal Data; and





- 4.5.5 the consultation with the ODPC following a data protection impact assessment, where a data protection impact assessment indicates that the Processing of the Personal Data would result in a high risk to Data Subjects.
- 4.6 Any proposal by the Supplier to in any way use or make available ETVDL Data other than as provided for pursuant to this Agreement shall be subject to prior written approval of ETVDL.
- 4.7 ETVDL acknowledges that the Supplier is under no duty to investigate the completeness, accuracy or sufficiency of (i) any instructions received from ETVDL, or (ii) any ETVDL Data.
- 4.8 ETVDL shall:
- 4.8.1 ensure that it is entitled to transfer the relevant ETVDL Data (PD) to the Supplier so that the Supplier may lawfully use, process and transfer (if applicable) ETVDL Data (PD) in accordance with this Agreement;
  - 4.8.2 ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by Data Protection Legislation;
  - 4.8.3 notify the Supplier in writing without delay of any situation or envisaged development that shall in any way influence, change or limit the ability of the Supplier to process ETVDL Data (PD) as set out in this Agreement;
  - 4.8.4 ensure that ETVDL Data (PD) that ETVDL instructs the Supplier to Process pursuant to this Agreement is:
    - (a) obtained lawfully, fairly and in a transparent manner in relation to the Data Subject (including in respect of how consent is obtained);
    - (b) collected and processed for specified, explicit and legitimate purposes, and not further processed in a manner incompatible with those purposes;
    - (c) adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed;
    - (d) accurate, and where necessary kept up to date;
    - (e) erased or rectified without delay where it is inaccurate, having regard to the purposes for which they are processed;
    - (f) kept in a form which permits identification of Data Subjects for no longer than is necessary for the purposes for which the Personal Data are processed (subject to circumstances where Personal Data may be stored for longer periods insofar as it will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, and subject to the implementation of Appropriate Technical and Organisational Measures);
    - (g) processed in a manner that ensures appropriate security of the Personal Data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures;
  - 4.8.5 provide such information and such assistance to the Supplier as the Supplier may reasonably require, and within the timescales reasonably specified by the Supplier, to allow the Supplier to comply with its obligations under Data Protection Legislation; and
  - 4.8.6 not alter the technical arrangements relating to the format, presentation and distribution of ETVDL Data to the Supplier without the Supplier's prior written approval.
- 4.9 ETVDL shall not pass any ETVDL Data (PD) to the Supplier for processing which has been kept by ETVDL for a period that is longer than necessary.
- 4.10 Unless required to do so by the ODPC or any other competent supervisory authority, the Supplier shall not make any payment or any offer of payment to any Data Subject in response to any complaint or any claim for compensation arising from or relating to the Processing of ETVDL Data, without the prior written agreement of ETVDL.
- 4.11 ETVDL acknowledges and agrees that the Supplier is reliant on ETVDL for direction as to the extent to which the Supplier is entitled to use and process ETVDL Data (PD). Consequently, the Supplier will not be liable for any claim brought by a Data Subject arising from any action or omission by the Supplier, to the extent that such action or omission resulted directly from ETVDL's instructions and/or the transactions contemplated by this Agreement.

## 5. Supplier's Employees

- 5.1 The Supplier shall take reasonable steps to ensure the reliability of all its employees who have access to ETVDL Data (PD), and to ensure that such employees have committed themselves to a binding duty of confidentiality in respect of such ETVDL Data (PD).





## **6. Records**

- 6.1 The Supplier shall keep at its normal place of business records (including in electronic form) relating to all categories of Processing activities carried out on behalf of ETVDL, containing:
  - 6.1.1 the general description of the security measures taken in respect of the Personal Data, including details of any Security Features and the Appropriate Technical and Organisational Measures;
  - 6.1.2 the name and contact details of the Supplier; any sub-supplier; and where applicable the Supplier's representatives; and where applicable any Data Protection Officer appointed by the Supplier;
  - 6.1.3 the categories of Processing by the Supplier on behalf of ETVDL; and
  - 6.1.4 details of any non-EEA Personal Data transfers, and the safeguards in place in respect of such transfers.

## **7. Audits**

- 7.1 Subject to Clause 7.2, 7.3 and 7.5, and to the extent required by Data Protection Legislation, ETVDL shall have the right to examine and review the use by the Supplier of ETVDL Data provided to the Supplier by ETVDL only for the purpose of ascertaining that such ETVDL Data has been used and Processed in accordance with the terms of this Agreement.
- 7.2 An audit under this Clause 7 shall be carried out no more than once in any twelve (12) month period and shall be conducted during Normal Business Hours during the course of one Business Day and shall only relate to the Personal Data. The Supplier shall grant to ETVDL (or representatives of ETVDL) on reasonable advance notice a right of access to the Supplier's premises during Normal Business Hours for the purpose of such examination and review, and the Supplier shall give such necessary assistance to the conduct of such examinations/audits. ETVDL shall bear the reasonable expenses incurred by the Supplier in respect of any such audit and any such audit shall not interfere with the normal and efficient operation of the Supplier's business. The Supplier may require, as a condition of granting such access, that ETVDL (and representatives of ETVDL) enter into reasonable confidentiality undertakings with the Supplier.
- 7.3 The scope of any examination and review by ETVDL of the use by the Supplier of the Personal Data shall be agreed in writing prior to the commencement of any such examination and review.
- 7.4 In the event that the audit process determines that the Supplier is materially non-compliant with the provisions of this Agreement, ETVDL may, by notice in writing, deny further access to ETVDL Data.
- 7.5 To the extent permitted under Data Protection Legislation, the Supplier may demonstrate its and, if applicable its Sub-processors', compliance with its obligations under this Agreement through its compliance with a certification scheme or code of conduct approved under Data Protection Legislation.

## **8. Confidentiality**

- 8.1 The Supplier acknowledges that ETVDL' Confidential Information includes any ETVDL Data.

## **9. Data Subject Requests**

- 9.1 Taking into account the nature of the Supplier's Processing of the Personal Data and at ETVDL' cost, the Supplier shall assist ETVDL by employing Appropriate Technical and Organisational Measures, insofar as this is possible, in respect of the fulfilment of ETVDL' obligations to respond to requests from a Data Subject exercising his/her rights under Data Protection Legislation.
- 9.2 The Supplier shall, at ETVDL' cost, notify ETVDL as soon as reasonably practicable if it receives:
  - 9.2.1 a request from a Data Subject for access to that person's Personal Data;
  - 9.2.2 any communication from a Data Subject seeking to exercise rights conferred on the Data Subject by Data Protection Legislation in respect of the Personal Data; or
  - 9.2.3 any complaint or any claim for compensation arising from or relating to the Processing of the Personal Data.



9.3 The Supplier shall not disclose the Personal Data to any Data Subject or to a third party other than at the request of ETVDL, as provided for in this Agreement, or as required by law in which case the Supplier shall to the extent permitted by law inform ETVDL of that legal requirement before the Supplier discloses the Personal Data to any Data Subject or third party.

9.4 The Supplier shall not respond to any request from a Data Subject except on the documented instructions of ETVDL or Authorised Person or as required by law, in which case the Supplier shall to the extent permitted by law inform ETVDL of that legal requirement before the Supplier responds to the request.

## **10. Data Protection Officer**

10.1 The Supplier shall appoint a Data Protection Officer, if required to do so pursuant to Data Protection Legislation, and provide ETVDL with the contact details of such Data Protection Officer.

10.2 ETVDL shall appoint a Data Protection Officer, if required to do so pursuant to Data Protection Legislation, and provide the Supplier with the contact details of such Data Protection Officer.

## **11. Security**

11.1 The Supplier shall, in accordance with its requirements under Data Protection Legislation, implement Appropriate Technical and Organisational Measures to safeguard ETVDL Data (PD) from unauthorised or unlawful Processing or accidental loss, alteration, disclosure, destruction or damage, and that, having regard to the state of technological development and the cost of implementing any measures (and the nature, scope, context and purposes of Processing, as well as the risk to Data Subjects), such measures shall be proportionate and reasonable to ensure a level of security appropriate to the harm that might result from unauthorised or unlawful Processing or accidental loss, alteration, disclosure, destruction or damage and to the nature of the Personal Data to be protected.

11.2 The Supplier shall ensure that ETVDL Data provided by ETVDL can only be accessed by persons and systems that are authorised by the Supplier and necessary to meet the Business Purpose, and that all equipment used by the Supplier for the Processing of ETVDL Data shall be maintained by the Supplier in a physically secure environment.

11.3 ETVDL shall make a back-up copy of ETVDL Data as often as is reasonably necessary and record the copy on media from which ETVDL Data can be reloaded in the event of any corruption or loss of ETVDL Data.

## **12. Breach Reporting**

12.1 The Supplier shall promptly inform ETVDL if any ETVDL Data is lost or destroyed or becomes damaged, corrupted, or unusable, or if there is any accidental, unauthorised or unlawful disclosure of or access to ETVDL Data. In such case, the Supplier will use its reasonable endeavours to restore such ETVDL Data at ETVDL' expense (save where the incident was caused by the Supplier's negligent act or omission, in which case it will be at the Supplier's expense), and will comply with all of its obligations under Data Protection Legislation in this regard.

12.2 The Supplier must inform ETVDL of any Personal Data Breaches, or any complaint, notice or communication in relation to a Personal Data Breach, without undue delay. Taking into account the nature of the Supplier's Processing of the Personal Data and the information available to the Supplier and at ETVDL' cost the Supplier will provide sufficient information and assist ETVDL in ensuring compliance with its obligations in relation to notification of Personal Data Breaches (including the obligation to notify Personal Data Breaches to the ODPC within seventy two (72) hours), and communication of Personal Data Breaches to Data Subjects where the breach is likely to result in a high risk to the rights of such Data Subjects. Taking into account the nature of the Supplier's Processing of the Personal Data and the information available to the Supplier and at ETVDL cost, the Supplier shall co-operate with ETVDL and take such reasonable commercial steps as are directed by ETVDL to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

## **13. Intellectual Property Rights**



- 13.1 The Supplier acknowledges that all Intellectual Property Rights in ETVDL Data are and will remain the property of ETVDL and the Data Subjects, as the case may be; and that the Supplier shall have no rights in or to ETVDL Data other than the right to use it for the purposes set out in this Agreement.

#### 14. **Restricted Transfers**

- 14.1 Subject to Clause 14 (B) of the Agreement, a Restricted Transfer may not be made by the Supplier without the prior written consent of ETVDL (such consent not to be unreasonably withheld, delayed or conditioned), and if such ETVDL consent has been obtained, such Restricted Transfer may only be made where there are Appropriate Technical and Organisational Measures in place with regard to the rights of Data Subjects (including but not limited to the Standard Contractual Clauses, Privacy Shield, binding corporate rules, or any other model clauses approved by the ODPC).
- 14.2 Subject to Clause 14.3, in the event of any Restricted Transfer by the Supplier to a contracted Sub-processor, to any affiliate of ETVDL or otherwise ("**Data Importer**") for which ETVDL consent has been obtained, the Parties shall procure that (i) ETVDL (where the Restricted Transfer is being made at the request of ETVDL) or the Supplier acting as agent for and on behalf of ETVDL (where the Restricted Transfer is being made at the request of the Supplier), and (ii) the Data Importer, shall enter into the Standard Contractual Clauses in respect of such Restricted Transfer.
- 14.3 Clauses 14.1 or 14.2 shall not apply to a Restricted Transfer if other compliance steps (which may include, but shall not be limited to, obtaining consents from Data Subjects) have been taken to allow the relevant Restricted Transfer to take place without breach of applicable Data Protection Legislation.

#### 15. **Sub-Processors**

- 15.1 ETVDL agrees and acknowledges that the Supplier may have the Personal Data Processed by any of its affiliates and by any agents and contractors (a "**Sub-processor**"). The Supplier shall inform ETVDL of any intended changes concerning the addition or replacement of other Sub-processors, thereby giving ETVDL the opportunity to object to such changes.
- 15.2 The Supplier must enter into a data processing contract with the Sub-processor which places obligations on the Sub-processor to implement Appropriate Technical and Organisational Measures in such a manner that the Processing will meet the requirements of Data Protection Legislation).
- 15.3 With respect to each Sub-processor, the Supplier shall, before the Sub-processor first Processes ETVDL Data (PD), ensure that the Sub-processor is capable of providing the level of protection for ETVDL Data (PD) required by this Agreement.
- 15.4 The Supplier will remain fully liable to ETVDL in respect of any failure by the Sub-processor to fulfil its data protection obligations in this regard.

#### 16. **Warranties**

- 16.1 The Supplier warrants and undertakes to ETVDL that:
- 16.1.1 the Supplier will Process ETVDL Data in compliance with the Data Protection Legislation;
  - 16.1.2 the Supplier will maintain Appropriate Technical and Organisational Measures against the unauthorised or unlawful Processing of ETVDL Data (PD) and against the accidental loss or destruction of, or damage to, ETVDL Data (PD); and
  - 16.1.3 the Supplier will discharge its obligations under this Agreement with all due skill, care and diligence.
- 16.2 ETVDL hereby warrants and undertakes that:
- 16.2.1 it has complied with and shall comply with its obligations under Data Protection Legislation;
  - 16.2.2 it has the right to transfer ETVDL Data (PD) to the Supplier in accordance with the terms of this Agreement;
  - 16.2.3 as far as it is aware, the Processing of ETVDL Data (PD) under this Agreement will not infringe the Intellectual Property Rights of any third party;
  - 16.2.4 ETVDL Data contains nothing that is defamatory or indecent;



- 16.2.5 ETVDL' instructions that are set out in this Agreement accurately reflect the instructions of the Data Controller to the extent that Xtremepush is a Data Processor of the Data Controller;
- 16.2.6 it shall and shall cause, appropriate notices to be provided to, and valid consents to be obtained from, Data Subjects, in each case that are necessary for the Supplier to Process (and have Processed by Sub-processors) Personal Data under or in connection with this Agreement, including Processing outside the EEA on the basis of any of the legal conditions for such transfer and Processing set out in Clause 15 above;
- 16.2.7 it shall not, by act or omission, cause the Supplier to violate any Data Protection Legislation, notices provided to, or consents obtained from, Data Subjects as a result of the Supplier or its Sub-processors Processing the Personal Data; and
- 16.2.8 notwithstanding anything contained in this Agreement, it shall pay in immediately available funds the Supplier's costs incurred or likely to be incurred, at the Supplier's option in advance under Clauses 5; 8; 10; 13 and 14 above.

## 17. Indemnity

- 17.1 ETVDL (the "**Indemnifying Party**") agrees to indemnify and keep indemnified and defend at its own expense the Supplier (the "**Indemnified Party**") against all costs, claims, damages or expenses incurred by the Indemnified Party or for which the Indemnified Party may become liable due to any failure by the Indemnifying Party or its employees or agents to comply with any of its obligations under this Agreement and/or under Data Protection Legislation.
- 17.2 If any third party makes a claim against the Indemnified Party, or notifies an intention to make a claim against the Indemnified Party, the Indemnified Party shall: (i) give written notice of the claim against the Indemnified Party to the Indemnifying Party as soon as reasonably practicable; (ii) not make any admission of liability in relation to the claim against Indemnified Party without the prior written consent of the Indemnifying Party; (iii) at the Indemnifying Party's request and expense, allow the Indemnifying Party to conduct the defence of the claim against the Indemnified Party including settlement; and (iv) at the Indemnifying Party's expense, co-operate and assist to a reasonable extent with the Indemnifying Party's defence of the claim against the Indemnified Party.

## 18. Termination

- 18.1 On any termination or expiry of this Agreement:
  - 18.1.1 all licences granted by ETVDL to the Supplier pursuant to this Schedule shall cease and have no further effect;
  - 18.1.2 subject to Clause 4.3, at the choice of ETVDL, the Supplier shall Delete or return all ETVDL Data to ETVDL and Delete existing copies of such ETVDL Data, unless legally required to store ETVDL Data for a period of time. If ETVDL makes no such election within a ten (10) day period of termination or expiry of this Agreement, the Supplier shall Delete any of ETVDL Data in its possession, unless legally required to store ETVDL Data for a period of time; and subject to Clause 4.3, if ETVDL elects for destruction rather than return of ETVDL Data under Clause 18.1.2, the Supplier shall as soon as reasonably practicable ensure that all ETVDL Data (PD) is Deleted from the Supplier System, unless legally required to store ETVDL Data for a period of time.
- 18.2 The Supplier shall provide written confirmation of compliance with this Clause in the form of a letter signed by an authorised representative no later than fourteen (14) days after termination or expiry of this Agreement.