

Phoenix Software PSP Terms And Conditions

PHX155

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Agreement For Use Of The Phoenix Solutions Platform (PSP) And Sale Of Services Offered Via The PSP

Clause 1 – Background

1. The Phoenix Solutions Platform (hereafter referred to as “PSP” has been developed and is edited by Phoenix Software Limited (hereinafter “Supplier”).

The Supplier offers via the PSP, Cloud computing services and the resale of third-party software dependent on the choices made by You (hereinafter “Services”). The PSP allows You to:

- i. obtain information about the Services, and
- ii. purchase the Services. The Services sold by the Supplier via the PSP are provided by Service Providers directly to You.

The Supplier is acting solely as a distributor, and not as a provider, of the Services and therefore shall not, to the maximum extent permitted by law, be liable for the provision or delivery of the Services and/or any service levels provided by the Service Providers. Additionally, the Supplier shall have no liability to You for any issues relating to under and/or over licencing or any usage over that specified in any agreement between You and the Service Provider.

2. The purchase of the Services is reserved either to a legal entity or natural person representing a legal entity, located in the Territory.
3. The use of the PSP or any information contained therein and the purchasing of the Services on the PSP is subject to your acceptance of this Agreement of use and sale for the PSP.
4. This Agreement of use and sale constitute a legally binding agreement between You and the Supplier, each a “Party” and together, the “Parties”
5. The Parties hereto agree as follows:

Clause 2 – Definitions

Definitions

6. The following terms shall have the meanings provided below:
 - **“Content”** means all data, software, solutions, and information including without limitation any hypertext markup language files, scripts, programs, recordings, sound, music, graphics, images, applets, or servlets that are created, installed, uploaded, or transferred in connection with the PSP or the Services;
 - **“Intellectual Property Rights”** means

- i. patents, designs, trademarks, and trade names (whether registered or unregistered), copyright and related rights, database rights, know-how and confidential information;
 - ii. all other intellectual property rights and similar or equivalent rights in the world which currently exist or are recognised in the future; and
 - iii. applications, extensions, and renewals in relation to any such rights;
- **"Marks"** means all worldwide proprietary indications, trademarks, trade names, service marks, symbols, logos and/or brand names;
- **"Purchase Order"** means an order placed by You to the Supplier for the Services presented in the PSP;
- **"Service Provider"** means one or more companies which provide the Services available in the PSP;
- **"Service Providers' Mark"** means Service Providers' logos, trademarks, trade names and similar identifying material;
- **"Services"** means the Cloud services (i.e. commercial applications, infrastructures, or services, etc.) and/or the resale of third-party software provided by the Service Providers, and offered by the Supplier to You, in whole or in part, on the PSP;
- **"Supplier"** means Phoenix Software Limited, the company offering the Services via PSP;
- **"Territory"** means the country where the Supplier has its registered office. In this Agreement, the Territory is the United Kingdom. If Territory is a member of the European Union ("EU") the Territory shall include all countries of the EU;
- **"PSP"** means the interactive self-service online store configured for and by the Supplier which contains a range of Services to be offered to You;
- **"You"** means any legal entity or natural person representing a legal entity, located in the Territory, that uses the PSP in order to contract with the Supplier and one or more Service Providers, and to use the Services in the regular course of such person or entity's business or personal use but not for resale or sublicensing.

Interpretation

- 7. The clause headings are for convenience only and shall not affect the interpretation of this Agreement.
- 8. References to the singular include the plural and vice versa, and references to one gender include the other gender.
- 9. Any reference to a statute, statutory provision, or subordinate legislation (together "legislation") shall (except where the context otherwise requires):
 - i. be deemed to include any bye-laws, licences, statutory instruments, rules, regulations, orders, notices, directions, consents, or permissions made under that legislation and
 - ii. shall be construed as referring to any legislation which replaces, re-enacts, amends, or consolidates such legislation (with or without modification) at any time.
- 10. Unless specifically provided to the contrary all notices under this Agreement shall be in writing.

Clause 3 – Purpose

11. The purpose of this Agreement of use of the PSP and sale of the Services is to:
- define the conditions of access and use for You to the PSP
 - detail the terms under which the Services shall be distributed and sold to You;
 - describe the contractual relationship between You and the Supplier.

Clause 4 – Contractual Documents

12. This agreement is made of the following contractual documents listed in order of priority:
- The policies, terms and conditions and/or disclaimers of the Service Provider of the purchased Services;
 - This Agreement of use and sale;
 - the information contained in the PSP.
13. In the event of an inconsistency between the policies, terms and conditions and/or disclaimers of the Service Provider of the purchased Services, this Agreement of use and sale and the information contained in the PSP, the documents shall be given the order of precedence set out above.
14. Notwithstanding the rules for the interpretation of contracts laid down by the applicable law, the following order of priority shall apply:
- obligation per obligation;
 - or, failing that, paragraph per paragraph;
 - or, failing that, subparagraph per subparagraph.

Clause 5 – Effective Date

15. This Agreement takes effect at the moment You receive your PSP Login Credentials.
16. You are bound by this Agreement during all the time of use of the PSP and of the Services, until their amendment. The Supplier reserves the right to modify this Agreement at any time and from time to time, without prior notice and each such modification shall be effective upon posting on the PSP.
17. You shall be informed of any new or changed terms and conditions of use and sale and the effective date of such. However, the use of the PSP and Services following any such modification constitutes your agreement to be bound by, and your acceptance of, the Agreement as so modified. It is therefore important that You review this Agreement regularly. If You do not agree to be bound by this Agreement and to abide by all applicable law, rules, and regulations, You must discontinue use of the PSP immediately.

Clause 6 – Services

Description Of The Services

18. The Services offered are described on the PSP.
19. It is your responsibility to evaluate the adequacy of the Services with your own needs.

Offer Of The Services

20. Offers published by the Supplier on the PSP are non-binding invitations to You to order the Services.
21. Any prices, quotations and descriptions made or referred to on the PSP are subject to availability.
22. Offers may be withdrawn or revised at any time prior to the Supplier's express acceptance of your order (as described below).
23. Promotional offers and prices are for a limited time, always clearly mentioned on the promotions explanations.

Registration And Set-Up To Access PSP

24. In order to access the PSP and to purchase the Services thereafter, You must register by providing your name, postal and email addresses, telephone numbers, payment processing data, billing information and some employee contact information.

Should you choose to establish a direct debit, this includes signing the Suppliers Direct Debit mandate to authorise all payments for cloud subscription and consumption Services used to be taken direct from your nominated bank account.

25. On validation of your registration details and receipt of the signed Direct Debit mandate (as appropriate) your account will be set up on the PSP and, where required, on the Service Providers relevant systems. You will be sent your PSP Login Credentials at this stage.
26. You certify that information provided is up-to-date, accurate and is sufficient for the Supplier to set up and validate your account and to fulfil your Purchase Orders thereafter.

You are responsible for maintaining and promptly updating your account information with the Supplier for accuracy and completeness and keeping such information (and any passwords given to You for the purposes of purchasing the Services) secure against unauthorized access.

Order Acceptance – Confirmation

27. A Purchase Order submitted by You constitutes your offer to the Supplier to purchase the Services subject to this Agreement and is conditional on the Supplier's subsequent acceptance.

28. An automatic email acknowledgement of the receipt of your order will be generated. You shall note that any such automatic acknowledgement does not constitute a formal acceptance of the Purchase Order.
29. You acknowledge and accept that Service Providers as well as the Supplier have the right to accept, reject or cancel any Purchase Order in their sole discretion. If so, the Supplier will inform You.
30. You must submit your Purchase Order(s) in the following way:
 - A Purchase Order to cover each purchase and subsequent charges for Services used in a time period stated on such Purchase Order;
31. The acceptance of your Purchase Order takes effect at the point where such offer is expressly accepted by the Supplier. This is the point when You will receive, by email, a product link which permits access to the Services ordered.

Services Policies and/or Disclaimers

32. You understand that the Service Providers' policies and/or disclaimers establish the general business terms under which the Service Providers agree to provide the Services.
33. The latest version of the Service Providers' policies, terms and conditions and/or disclaimers is available in the PSP.
34. Consequently, You represent and warrant that your use of the Services will, at all times, comply with the Service Providers' terms and conditions, policies and/or disclaimers provided by the Service Providers.
35. Service Providers may require the Supplier to have access to Your environment. Such access must remain in place as part of the Service procured whilst trading with the Supplier. The Supplier will not enter your environment and/or perform any technical changes to your Azure environment unless requested to do so in writing by you.

Access To The Services

36. All costs relating to the access of the PSP and use of the Services (i.e. costs relating to material, hardware, software, and internet access) shall be borne by You, and You are solely responsible for the proper functioning of your computer equipment.
37. The PSP and the Services are accessible 24 hours a day and 7 days a week.
38. Nevertheless, the Supplier and/or Service Providers reserve the right, without notice or compensation, to close temporarily the access to the PSP or the Services respectively, including, without any limitation, to perform updates, modifications, or changes in operational methods, servers, and hours of availability or in the event of non-payment for the Services used and invoiced.

39. The Supplier shall not be liable for any damages that could result from these updates, modifications, changes and/or temporary or permanent closure.

Modification Of The Services

40. You accept that the Service Providers may from time to time add new Services or options, or in their reasonable discretion, change agreement terms or withdraw existing Services or options, in whole or in part.
41. You shall be informed of any such new or changed Services, terms or Services withdrawals and the effective date of such.

Clause 7 – Use Of The Services

Scope Of The Rights Granted

42. The purchase of the Services on the PSP grants You access to the Services ordered and to any applicable Documentation for the concerned Services.
43. The license for use of the Services is granted by the Service Providers and You must use the Services according to the Service Providers' terms and conditions, policies and/or disclaimer provided by the Service Providers of the concerned Services.
44. In consequence, You may not, in particular:
- remove or modify any marking or any notice of Service Providers' Intellectual Proprietary Rights;
 - alter or modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Services;
 - disclose results of any Services without the Service Providers' prior written consent.

Contact

45. The Supplier shall be your sole contact for:
- applying credit checks;
 - order handling including modification and cessation;
 - order enquiries services;
 - addressing all billing enquiries;
 - handling returned invoices;
 - providing revenue collection and assurance;
 - providing first level support with respect to the Services.
46. For the avoidance of doubt, all claims for service credits and/or any other claims shall be made by You directly to the Service Provider from whom the Services have been purchased.

Clause 8 – Price And Payment

Price

47. The price of the Services corresponds to the Supplier's rate prevailing on the day the Services are purchased.
48. Prices are without taxes and shall be increased by the taxes, VAT included, prevailing on the invoice date.

Invoicing

49. Invoices will be created by the Supplier and issued to You each month for the Services used. Charges for Services used may be invoiced in advance or in arrears and consolidated or separate invoices for more than one Service Provider's Services may be raised at the Supplier's choice. The total invoice amount is due from the invoice date and shall be paid by You within 30 days of the date of such invoice. Each invoice shall be paid without deduction and/or set-off and time for payment by you shall be of the essence.

Payment

50. In the event You choose to establish a direct debit, every invoice payment will be collected by Direct Debit on or around 15th of the month as authorized by You on registration to become a PSP user.
51. In the event that a Direct Debit collection fails or is cancelled by You and the Supplier is not able to collect any amount due for Services used, or an invoice is not paid by You within 30 days of the date of such invoice, the Supplier reserves the right without notice or compensation to disable access to the PSP and to notify the Service Provider to disable access to the Services with immediate effect. Access to the PSP and to the Services will continue to be disabled until the Direct Debit collection is re-instated or payment made to the Supplier by some other means, or the overdue invoice payment is received.
52. Without prejudice to its other rights and remedies, the Supplier will be entitled to charge late payment interest on any payment or invoices which are due but unpaid as a rate of 4 per cent per annum above the base rate from time to time of Barclays Bank PLC, from the date on which the invoice became overdue until the actual date of payment (whether before or after judgement). You shall pay such interest together with the overdue amount. Phoenix reserves the right to place the matter in the hands of its appointed debt recovery agent and shall be entitled to a full reimbursement of any fees or disbursements paid out in relation to such recovery.

Clause 9 – Warranties

53. Unless agreed otherwise or required by applicable law, any warranties provided in relation to Services only extend to You on the understanding that You are a user and not a reseller of those Services.
54. The Supplier expressly warrants to You the full enjoyment otherwise granted by the Service Providers in the provision of the Services, to the extent permitted by the warranty given by the Service Providers. The warranties which are assigned under this clause 54, are the only warranties given under this Agreement. Any other warranties, conditions, obligations, or implied terms which are implied into this Agreement by statute, custom or at law (including, without limit, any warranties of fitness for purpose or relating to satisfactory quality) are excluded to the fullest extent permitted by in law.
55. However, the Supplier does not warrant the availability of the Services or that the Services will be error free or will be provided without any interruption or that they meet your expectations. It is up to You to inform yourself on the Services and to evaluate the adequacy of the Services with your needs.

Clause 10 – Liability

56. Subject to the limits and exclusion included in this Clause 10 and to the extent permitted by Clause 11, each Party will be liable for breaches of this Agreement arising, from such Party's acts or omissions or for acts or omissions of its employees, agents, or subcontractors, except in the event that such breaches are due to the actions or omissions of the other Party in breach of this Agreement.
57. You undertake to establish and maintain security policies, procedures, and infrastructure in accordance with good industry practice and not to commit any act and/or omission that may jeopardize the security of your IT system and the IT systems and equipment of the Supplier and/or Service Providers.
58. You undertake not to interfere or interrupt the proper functioning of the PSP and/or of the Services.
59. You agree to indemnify and hold the Supplier, its affiliates, subsidiaries, officers, agents, partners, employees, and licensors harmless from any claim or demand, including reasonable attorney's fees, made by any third party due to or arising out of your usage of the PSP or of the Services, your breach of this Agreement, any security breach, whether such breach leads to increased charges or not or of the applicable law, or an alleged violation of any other rights of a third party.

Clause 11 – Limitation Of Liability

60. The Supplier shall not be held responsible for:
- any lack of quality of the information contained in the PSP or in the Services which are provided on an "AS IS" basis and "as available" basis,
 - disruptions or damages caused by internet or which present the characteristics of an event of force majeure,
 - any other disruptions relating to the use of the PSP or the Services,
 - breaches of IT security that could cause damages to your computer equipment and/or data or third-parties' equipment and/or data;
 - breaches of this Agreement by a third party
61. The Supplier shall only be liable for direct damage suffered by You due to the Suppliers breaches, or failures in the performance, of this Agreement.
62. Nothing in this Agreement shall exclude or restrict either Party's liability for death or personal injury resulting from its negligence or the negligence of their employees or contractors while acting in the course of their employment.
63. Nothing in this Agreement shall limit each Party's liability for breach of the other Parties' Intellectual Property Rights.
64. The Supplier shall not be liable to You for any indirect economic loss, incidental, consequential loss or damages, including loss of revenue, loss of reputation, loss of profits or anticipated savings, loss or corruption of data, damage to Content arising from the Supplier's performance or breach of this Agreement even if it has been advised of the possibility of such damages.
65. The Supplier's liability in contract, tort, or otherwise, including any liability for negligence, non-fraudulent misrepresentation, howsoever arising out of or in connection with the performance of its obligations under this Agreement shall be limited to the lesser of:
- the total amounts paid by You in purchasing the Services via the PSP during the twelve (12) month period immediately preceding the date of the event causing the claim, or
 - GBP 10,000 for any one event or series of related events. Any liability that is not expressly assumed in the Agreement is hereby excluded
66. All liability that is not expressly assumed in this Agreement is hereby excluded. These limitations will 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 each Party includes its directors, employees, sub-contractors, and suppliers. The Parties acknowledge that the other Party's directors, 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. Nothing in this Agreement shall exclude or limit liability for fraudulent misrepresentation.
67. Both Parties acknowledge and agree that the limitations and exclusions of liability set out in this Clause are reasonable and have been agreed taking into account the commercial value of this Agreement to each Party and the commercial standing of each Party.

Clause 12 – Intellectual Property

68. These terms and conditions do not assign any of the intellectual property rights on the PSP and its components. The PSP and its components, including but not limited to marks, designs, drawings, models, images, text, photos, logos, graphs, software, search engine, databases and domain names are the exclusive property of or has been transferred or licensed to the Supplier.
69. The Service Providers own the Intellectual Property Rights in and to the Services and Service Providers' Marks, including all copies of any of the foregoing. All rights not expressly granted herein or otherwise by the Service Providers are reserved by the Service Providers
70. As a result, You are prohibited from any action or activity that might adversely affect, directly or otherwise, the Supplier's or the Service Provider's intellectual property rights on the PSP and its components or the Services and the Service Providers Marks. Any reproduction and/or representation, in whole or in part, of one of these rights, without the express authorization of the Supplier or Service Provider, is prohibited and will constitute an infringement sanctioned under the applicable law.

Clause 13 – Protection Of Personal Data

General Conditions

71. The Supplier complies with Data Protection Legislation when performing its obligations under this Agreement and with the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 which, amongst other things, includes the requirements for the use of cookies or for carrying out direct marketing.

You acknowledge that the Supplier is entitled to use cookies or any other equivalent technique enabling it to track your browsing in the PSP.

72. By purchasing any of the Services offered via the PSP, You acknowledge and agree with the collection and/or use of your data.
73. The Supplier will collect process and store some or all of the following personal data which You have provided or will provide to the Supplier in relation to the purchase of the Services: contact names and corresponding postal addresses, email addresses, telephone numbers, payment processing data, billing information, etc.
74. The personal data is collected solely for the purpose of processing the purchases.

Data Storage

75. Data, including personal data, shall be stored in an electronic database maintained on servers hosted by the Supplier, its Service Providers, or its subcontractors. The personal data shall be

used by the Supplier exclusively for the purposes of facilitating your order, including processing any payments made by You.

You are solely responsible for the content of all your Data. Should the Supplier, Service Provider or subcontractor require to suspend your service due to a breach of contract, notice will be provided to you to remove your data within a specified time scale. It is your responsibility to make alternative provisions for your data. The Supplier, Service Provider or subcontractor cannot be held responsible for any loss of data.

Data Exchange

76. The personal data collected on the PSP may be communicated by the Supplier to any person who is involved into the process of the purchase. The provisions of Appendix 1 to this PSP agreement shall apply to the extent that the Supplier is acting as a processor.

Legal Requirements

77. The Supplier may be required to provide personal data to comply with legally mandated reporting, disclosure to a regulator (e.g. the ICO), a court, or to a public body to comply with any regulatory, government or legal requirement. The Supplier may transfer and access PSP data and your information globally as required for the purposes specified.

Your Rights

78. According to the applicable law, You have the right to enquire, access, rectify and oppose your personal data by writing to the HR Department at Phoenix Software Ltd, Blenheim House, York Road, Pocklington, York, YO42 1NS.

Clause 14 – Confidentiality

79. Each Party agrees to consider as strictly confidential, and to treat them as such, the information and documents, in particular the technical, business, financial information and documents, exchanged between them or collected, whatever their nature and media, within the framework of the Services supplied under this Agreement.
80. The following information of each Party will not be considered as confidential:
- information publicly available prior its disclosure to the other Party;
 - information publicly available otherwise than as a result of an act or action of the other Party;
 - information disclosed to the other Party by a third party not subject to a confidentiality obligation, or who would not have acted in violation of an agreement with that third party.
81. The Parties agree not to disclose or let any third party whatsoever disclose directly or through an intermediary all or part of the documents and information of the other Party it may have knowledge of.

82. In the latter case, the Party concerned undertakes to take all relevant measures so that said employees and/or subcontractors comply with this confidentiality obligation in the same conditions as those laid down in this Agreement.
83. The Parties agree not to use the documents and information so exchanged in a context other than for the purposes and for the performance of this Agreement without the prior express consent of the other Party.
84. Each Party agrees to return to the other if it so requests any document or other media that the disclosing Party has delivered to the receiving Party in the course of performance of this Agreement; these documents and information remain the property of the disclosing Party; without the receiving Party being able to keep any copy or reproduction thereof.
85. Neither Party shall without the prior written consent of the other Party divulge any part of the other Party's confidential information to any person except:
- to their own employees and then only to those employees who need to know the same; or
 - to either Party's auditors, an officer of HM Customs and Excise, a court of competent jurisdiction, governmental body or applicable regulatory authority and any other persons or bodies having a right duty or obligation to know the business of the other Party and then only in pursuance of such right duty or obligation.

Clause 15 – Probative Value Of Electronic Exchanges

86. The Parties represent that they may exchange the information required for the performance of the Services covered by this Agreement by email and by computer file. The Parties expressly represent that those emails and files will have between them the value of evidence, in accordance with the applicable law.

Clause 16 – Cancellation-Termination

Termination For Convenience Or Breach Of The Obligations

87. The Agreement shall commence on the Effective Date and will continue until:
- i. terminated in accordance with the provisions provided hereinafter; or
 - ii. without cause by either Party upon thirty (30) days prior written notice to the other Party.
88. Either Party shall be entitled to immediately terminate this Agreement by written notice if:
- the other Party commits a material breach of any terms of this Agreement and (in the case of a remediable breach) fails to remedy the breach within five (5) calendar days of being requested by written notice so to do; or
 - an order is made or a resolution is passed for the winding-up of the other Party or an order is made for the appointment of an administrator to manage the affairs, business

and property of the other Party a receiver and/or manager or administrative receiver is appointed in respect of all or any of the other Party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or which entitle the court to make a winding-up or bankruptcy order in respect of the other Party or the other Party takes or suffers any similar or analogous action in consequence of debt.

Effect Of Termination

89. Termination of this Agreement howsoever caused shall be without prejudice to any rights or liabilities accrued at the date of termination. The termination of this Agreement for whatever cause shall not affect any provision of this Agreement which is expressed or by implication intended to survive or operate in the event of termination of this Agreement.
90. Upon the termination of this Agreement, You shall have no right to any compensation for the termination of this Agreement.
91. Upon the termination of this Agreement, You must immediately discontinue use of the Services.

Clause 17 – Force Majeure

92. In case of a force majeure event, the performance of this Agreement will first be suspended.
93. If a force majeure event lasts for more than two (2) months, this Agreement shall be automatically terminated, unless otherwise agreed by the Parties.
94. It is expressly agreed between the Parties that event of force majeure or fortuitous events will be the following, in addition to those usually retained by the decisions of the courts and tribunals: total strikes, internal or external to the company of the Parties, lock-out, bad weather, epidemics, suspension for any reason of transportation or supplies means, telecommunications network unavailability, earthquakes, fires, storms, floods, water damage, governmental restrictions, legal or statutory modifications preventing the performance of the PSP or of the Services.
95. If either Party is prevented from or delayed in performing any of its obligations under this Agreement by a force majeure event, such will promptly notify the other Party.

Clause 18 – Non-Waiver

96. The failure of a Party to exercise or enforce any right under this Agreement shall not be deemed to be a waiver of that right, nor operate to bar the exercise or enforcement of it at any time or times thereafter.

Clause 19 – Independence Of The Parties

- 97. The Parties acknowledge that they each act for their own account as independent contractors and shall not be considered as the agent of the other.
- 98. Nothing in this Agreement is intended to constitute a partnership, franchise, joint venture, or agency relationship.
- 99. Neither Party may contract for and on behalf of the other.
- 100. Furthermore, each of the Parties remains solely responsible for its acts, assertions, commitments, services, products, and personnel.

Clause 20 – Assignment Of Agreement

- 101. The Supplier shall have the right to assign, transfer and otherwise delegate all or any of its rights and obligations hereunder to a designated representative or to any other person.
- 102. You shall not assign or otherwise transfer all or any of your rights and obligations under this Agreement without the Supplier's prior written consent.

Clause 21 – Severability

- 103. If one or more provisions of this Agreement are held to be invalid or so declared by a law, a regulation or a final decision having res judicata effect rendered by a court having proper jurisdiction, the other provisions shall remain in full force and effect.
- 104. The Parties agree to substitute for any such invalid, illegal, or unenforceable provision a new provision which serves the purpose of the invalid provision to the furthest possible extent.

Clause 22 – Entire Agreement

- 105. These terms and conditions supersede all prior agreements, arrangements and undertakings between the Parties and constitute the entire agreement between the Parties relating to the subject matter of this Agreement. However 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 between the same. 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.

Clause 23 – Proof Of Agreement

106. The acceptance of this Agreement by electronic means has, between the Parties, the same evidentiary weight as a paper document.
107. The computerized record stored in the computer systems in reasonable security conditions will be considered as proof of the communications between the Parties.
108. The contractual documents are stored in a reliable and sustainable back up and can be produced as evidence.

Clause 24 – Notices

109. Any notice given under this Agreement shall be in writing and signed by or on behalf of the Party giving it and shall be served by delivering it personally or sending it by pre-paid recorded delivery or registered post to the relevant Party at its registered office for the time being its last known address, or by sending it by confirmed fax to the fax number or by email to the email address notified by the relevant Party to the other Party. Any such notice shall be deemed to have been received:
 - i. if delivered personally, at the time of delivery;
 - ii. in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting; and
 - iii. in the case of fax or email, at the time of transmission.
110. In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant Party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post or that the notice was transmitted by fax to the fax number or by email to the email address of the relevant Party.

Clause 25 – Governing Law And Jurisdiction

111. These terms and conditions and any disputes or claims arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.
112. The Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or their subject matter or formation (including non-contractual disputes or claims).

Appendix 1 – Data Protection Schedule

1. DEFINITIONS AND INTERPRETATION

1.1 In this Schedule the following expression shall have the following meanings:

"Data Protection Law"	the Data Protection Act 2018 and all applicable laws and regulations from time to time in force relating to data protection, privacy, and the processing of personal data, including the GDPR.
"DP Regulator"	a regulatory, administrative, supervisory, or governmental agency, body or authority (whether regional, national or supranational) with jurisdiction over the Personal Data processing activities contemplated by this PSP.
"GDPR"	the European General Data Protection Regulation, namely Regulation (EU) 2016/679.
"Loss"	any and all loss, liability, cost (including legal costs), expenses, actions, adverse judgement, proceedings, claims, penalties, fines and demands and Losses shall be construed accordingly.
"Personal Data"	the personal data that is processed by the Supplier on behalf of the Client in accordance with this PSP.
"Safe Countries"	the countries that comprise the EEA, and in the event that the United Kingdom or any part of it falls outside the EEA, those countries, and the United Kingdom or that part of it.
"Security Incident"	(a) the unlawful or unauthorised processing of Personal Data; or (b) any breach of security affecting the Personal Data (including (without limitation) a personal data breach as defined in the GDPR).

1.2 Unless the context otherwise requires **"controller"**, **"processor"**, **"processing/process"**, **"personal data"**, **"personal data breach"** and **"data subject"** shall be interpreted and construed by reference to Data Protection Law.

1.3 References to a law of the European Union include a reference to that law as incorporated into the laws of the United Kingdom at any time before or after the United Kingdom ceases to be a Member State of the European Union.

2. DATA PROTECTION

2.1 The Parties hereby agree that, to the extent the Supplier processes Personal Data on behalf of You the Supplier will act as a processor for and on behalf of You (as controller).

2.2 To the extent that the Supplier acts as a processor for You with respect to the Personal Data, the Supplier shall:

2.2.1 only process the Personal Data for the purposes of performing its obligations under this PSP and in accordance with the written instructions given by You from time to time, unless the Supplier is subject to an obligation under applicable law (including Data Protection Law) of the UK, Europe-an Union or a member state of the European Union to do otherwise, in which case the Supplier shall (unless prohibited by law on important grounds of public interest) notify You in advance of that legal obligation;

2.2.2 immediately inform You if, in the Supplier's opinion, an instruction from You breaches a requirement of Data Protection Laws, provided that the foregoing obligation shall not be

construed as an obligation on the Supplier to provide legal or professional advice or services to You and the Supplier shall have no liability for any Losses suffered or incurred by You as a result of the Supplier's failure to notify You as set out in this paragraph;

- 2.2.3 at the reasonable request of You (and at your expense), provide to You such reasonable assistance as is contemplated by Article 28(3)(e) of the GDPR;
- 2.2.4 notify You in writing of each Security Incident of which it becomes aware. The Supplier shall (to the extent feasible) ensure that the initial notification comprises the information required under Article 33(3) of the GDPR. In the event that the Supplier is unable to provide all of the information required under this Clause in accordance with the time limits set out above, the Supplier shall provide as much information as it is able to within those time limits and shall provide all further information as soon as reasonably practicable thereafter;
- 2.2.5 taking into account the nature of the processing and the information available to the Supplier; upon the reasonable request of You, and at your sole cost and expense, the Supplier shall, within such reasonable timescales as the Supplier agrees in writing, provide You the following assistance;
- a) provide You with information in order to enable You to produce data protection impact assessments ("DPIAs");
 - b) taking into account the state of the art, the costs of implementation and the nature, scope, context, and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, in relation to the Personal Data, assist You in implementing appropriate security measures appropriate to that risk;
 - c) where a DPIA requires provide You with information required in relation to consulting the DP Regulator; and
 - d) following a Personal Data breach:
 - i. provide You with such information as is necessary to allow You to notify data subjects; and
 - ii. provide You with such information as is required under Article 33(3) of the GDPR.
- 2.2.6 ensure that appropriate technical and organisational measures are in place to safeguard against the unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data and such measures shall meet the requirements of Article 32 of the GDPR on and from the date the GDPR applies;
- 2.2.7 ensure that any of its personnel who are authorised to process the Personal Data are bound by a duty of confidence to maintain the confidentiality of the Personal Data;
- 2.2.8 upon conclusion of the Personal Data processing activities contemplated by this PSP, the Supplier will (as directed by You or, in the absence of any direction, as elected by the Supplier) securely re-turn or securely destroy the Personal Data and all copies in the Supplier's power, possession or control, unless the Supplier is required to keep such Personal Data for its compliance with applicable law.

- 2.3 Subject to paragraph 2.4, the Supplier shall provide You with all information reasonably requested by You to enable You to verify the Supplier's compliance with this paragraph 2. Without prejudice to the foregoing and upon one month's prior written notice from You, the Supplier shall assist You in undertaking an audit of the Supplier's compliance with the requirements of this paragraph 2 with respect to the Personal Data, provided that the scope of the audit and manner in which it is conducted will be agreed between the Parties in advance and shall ensure such audit does not adversely affect the Supplier's operations. You shall act reasonably and in good faith in exercising its audit rights under this paragraph 2.3 and the Supplier's costs and expenses incurred in assisting You with each audit shall be borne by You. Your audit rights as set out in this paragraph 2.3 shall not be exercised by You more frequently than once a year.
- 2.4 The provisions of paragraph 2.3 shall not apply to the extent that the Supplier has commissioned an independent third-party audit which addresses the same audit scope as described at paragraph 2.3 within 6 months of your audit request and the Supplier confirms there are no known material changes in the processing audited. In such circumstances You agree to accept those findings in lieu of requesting an audit.
- 2.5 You acknowledge that the Supplier may transfer Personal Data outside of the Safe Countries. The Supplier shall ensure that, where such transfers take place, safeguards are put in place in order to comply with Data Protection Law and the Client agrees to provide such assistance as is reasonably required by the Supplier to ensure such transfer complies with such Data Protection Law.
- 2.6 The Supplier may subcontract the processing of Personal Data to any third party (each sub-processor). The Supplier shall notify You of each sub-processor that it intends to subcontract the processing of Personal Data to. If within fourteen (14) days of receipt of that notice, You notify the Supplier in writing of any objections to the proposed appointment (such objections to be made on reasonable grounds which shall be limited to a reasonable belief of You that the requirements of paragraph 2.7 have not been satisfied), the Supplier shall not appoint (nor disclose your Personal Data to) that proposed sub-processor until reasonable steps have been taken to address the objections raised by You and You have been provided with a reasonable written explanation of the steps taken. You acknowledge and agree that any objection raised by You may cause or contribute to a delay or failure by the Supplier and/or its sub-processor to perform the Supplier's obligations under this PSP, and that the Supplier shall not be liable for any Losses suffered or incurred by You arising out of or in connection with any such delay or failure.
- 2.7 With respect to each sub-processor the Supplier will ensure that it has in place an agreement with the sub-processor that provides no less protection for Personal Data than those set out in paragraph 2. The Supplier shall remain responsible for the acts and omissions of its sub-processors.
- 2.8 This paragraph 2 shall remain in full force and effect at all times, notwithstanding the termination or expiry of this PSP.

Version Control

<u>Author</u>	<u>Version</u>	<u>Date</u>	<u>Description</u>
Ian Roscoe	1.0	October 2018	Original Document
Ian Roscoe	1.1	13/07/2023	Amendments to Clauses 1, 52, 54, 57, 59

Document Approval

<u>Name</u>	<u>Version</u>	<u>Date</u>	<u>Position</u>
Clare Metcalfe	1.0	October 2018	Operations Director
Clare Metcalfe	1.1	14/07/2023	Operations Director

Signed: *Clare Metcalfe* Clare Metcalfe, Operations Director

Dated: 14/07/2023