

Orta Tech's TERMS AND CONDITIONS

(these Terms and Conditions)

1. Definitions

In this Agreement:

1.1 the following terms shall have the following meanings unless the context requires otherwise:

Account: the account that we allocate to you, which sets out details of the Report Requests that you have submitted to us and the Report Request Confirmations we have provided to you;

Agreement: these Terms and Conditions together with the Key Details Document and any document referred to in these Terms and Conditions or the Key Details Document;

AU Personal Data: has the meaning given to it in Clause 10.3;

Authorised Users: Subjects and/or Client Users, as applicable;

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

Charges: the Portal Access Charges and/or the Reporting Charges, as applicable;

Check(s): a single background or document check or a bundle of background or document checks that is/are carried out by us on your behalf;

Client, you or your: the recipient of Services under this Agreement, as set out in the Key Details Document;

Client Data: the data inputted by you, the Authorised Users, or us on your behalf in providing the Services (which may include Personal Data), as well as information and other materials in any form relating to you and/or the Authorised Users and which may be accessed, generated, collected, stored or transmitted by us in the course of the performance of the Services (including any Deliverables);

Client Systems: any computer program (in object code or source code form), program interfaces and/or software tools used by you to access and use the Portal;

Client Users: those of your employees, agents and independent contractors, who are authorised by you to access the Portal, as further described in Clause 4.3;

Commencement Date: the date upon which we countersign the Key Details Document and return it to you pursuant to Clause 2.1;

Confidential Information: any information in any form or medium obtained by or on behalf of either Party from or on behalf of the other Party in relation to this Agreement, which is expressly marked as confidential or which a reasonable person would consider to be confidential, and which may concern the other Party's business, plans, ideas, methodologies, specifications, data, financial condition or clients and whether any of the foregoing information is disclosed or obtained before, on or after the date of this Agreement, together with any reproductions of such information or any part of it;

Controller: has the meaning set out in the Data Protection Laws;

Data Subject: has the meaning set out in the Data Protection Laws;

Data Protection Laws: in relation to any Personal Data which is processed in the performance of this Agreement, all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and all other legislation and regulatory requirements in force from time to time;

Deliverable: the report, certificate, or other outcome document generated as a result of us carrying out any Checks for you;

Event of Force Majeure: has the meaning given to it in Clause 13.1;

GDPR: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation);

Good Industry Practice: in relation to any undertaking and any circumstances, the exercise of that degree of professionalism, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or an internationally recognised company engaged in the same type of activity under the same or similar circumstances;

Intellectual Property Rights: copyright and related rights, trade marks and service marks, trade names and domain names, rights under licences, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, patents, rights to inventions, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, 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;

Orta, we, us or our: Orta Tech Limited, whose company number is 16346104 and whose registered office is at Clippers House, Clippers Quay, Salford Quays, M50 3XP;

Key Details Document: the form we provide to you setting out certain commercial details about the Services we are to provide to you;

Parties: us and you, and **Party** shall mean either us or you;

Personal Data: has the meaning set out in the Data Protection Laws;

Personal Data Breach: has the meaning set out in the Data Protection Laws;

Personal Subject Data: has the meaning given to it in Clause 10.3.2;

Portal: the cloud-based website/SaaS platform, operated by us and accessible at Orta;

Portal Access Charges: the charges, as outlined in the Key Details Document, paid/payable by you to us in return for your receipt of the Portal Access Services;

Portal Access Services: has the meaning given to it in Clause 4.1;

Portal Functionality: has the meaning given to it in Clause 4.10;

Processing: has the meaning set out in the Data Protection Laws and **Process** shall be interpreted accordingly;

Processor: has the meaning set out in the Data Protection Laws;

Reporting Charge: each charge, as outlined within the Portal at the time a Report Request is submitted by you to us, which shall be paid by you to us for our performance of a Check;

Report Request: a request submitted by you, using the functionality available through the Portal, for us to provide Reporting Services to you;

Report Request Confirmation: has the meaning given to it in Clause 5.5;

Reporting Services: the services performed by us in carrying out Checks for you;

Services: the Portal Access Services and/or the Reporting Services (as applicable);

Special Categories of Personal Data: those categories of data listed in Article 9(1) GDPR;

Subject: any individual who is the subject of a background or document check we carry out on your behalf;

Supervisory Authority: (a) an independent public authority which is established pursuant to Article 51 GDPR; and (b) any similar regulatory authority responsible for the enforcement of Data Protection Laws;

Term: has the meaning given to it in Clause 8.1;

UK GDPR: the GDPR as applied by Chapter 3 of Part 2 of the Data Protection Act 2018; and

Virus: anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices;

- 1.2 references to **Clauses** shall be to clauses of these Terms and Conditions;
- 1.3 Clause headings shall not affect the interpretation of this Agreement;
- 1.4 in the event of a conflict between these Terms and Conditions and the Key Details Document, the Key Details Document shall prevail over these Terms and Conditions;
- 1.5 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.6 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.7 unless the context otherwise requires, a reference to one gender shall include a reference to the other gender and the neutral;
- 1.8 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.9 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.10 a reference to **writing** or **written** includes e-mail; and
- 1.11 any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding or following those terms and shall be deemed to be followed by the words **without limitation** unless the context requires otherwise.

2. Agreement

- 2.1 Your submission to us of a signed version of the Key Details Document shall be deemed to be an offer made by you to us to receive the Services from us, subject to the provisions of these Terms and Conditions, and we shall accept such offer by countersigning the Key Details Document. This Agreement shall only be legally formed, and the Parties legally bound, when the Key Details Document has been signed by both Parties.
- 2.2 The terms of this Agreement apply to the exclusion of any terms and conditions submitted, proposed or stipulated by you in whatever form and at whatever time. If you provide to us a purchase order for your receipt of the Services, that purchase order (and any terms and conditions attached or referred to in it) shall be purely for your administrative purposes and shall not form part of this Agreement.
- 2.3 Save as expressly provided in this Agreement, this Agreement shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the Parties preceding the date of this Agreement and in any way relating to the subject matter of this Agreement and to the exclusion of any representations not expressly stated in this Agreement except for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. Each Party acknowledges that it has not entered into this Agreement based on any representation that is not expressly incorporated into this Agreement.
- 2.4 This Agreement constitutes the whole agreement and understanding of the Parties as to the subject matter of this Agreement and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to in this Agreement.

3. Supply of Services

- 3.1 During the Term and in return for your payment of the Charges, we shall provide the Services to you.
- 3.2 We shall:
 - 3.2.1 use our reasonable skill and care in providing the Services;
 - 3.2.2 ensure that our employees, agents and subcontractors have the necessary skill to provide the Services;
 - 3.2.3 ensure that, where applicable, the Services will be provided in a professional, competent and workmanlike manner;
 - 3.2.4 subject to Clause 5.3, we have all necessary consents, rights and permission to enter into, and perform our obligations under, this Agreement; and
 - 3.2.5 we shall comply with all applicable laws, statutes, regulations and bye-laws in relation to the exercise of our rights and performance of our obligations under this Agreement.
- 3.3 We are not responsible for any people, equipment, deliverables or services that we are not expressly stipulated to provide in this Agreement. You are responsible for any people, equipment, deliverables and services that you need to obtain from someone other than us. Except for any matter in relation to which we specifically agree in writing to advise or do, we shall not be responsible, or have any liability (subject to Clause 12.2), for advising on, or failing to advise on, or doing, or failing to do, anything else.
- 3.4 Subject to us performing the Services within any timeframe agreed as being necessary for the performance of the Services, we may select our own working times and location provided that the nature of particular services does not require those particular services to be undertaken during particular working times or at a particular location (in which situation you shall be entitled to request that we perform the Services at such working times and location as are reasonable in the circumstances).
- 3.5 We shall use our reasonable endeavours to perform our obligations under this Agreement within any timescales set out in this Agreement. However, time shall not be considered to be of the essence for the performance of the Services, and, subject to Clause 12.2, we shall not have any liability for any delays to perform our obligations:
 - 3.5.1 if we have used reasonable endeavours to comply with any timescale;
 - 3.5.2 if the delay is caused by any failure or delay on your part or on the part of your employees, agents or subcontractors, or by any breach by you of this Agreement or any other agreement; and/or
 - 3.5.3 if we experience an Event of Force Majeure.
- 3.6 If we are delayed or hindered in providing any Services as a result of any breach, delay or failure by you to perform any of your obligations under this Agreement or any other agreement between us and you, then we may charge you at our time and materials rates in force from time to time for any time reasonably incurred as a result of the hindrance or breach (including any wasted time for which we had anticipated that our personnel would provide Services under this Agreement but become unable to provide the Services at that time as a result of your act or omission).
- 3.7 We have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, and we shall notify you in writing as soon we become aware of any such event.

4. Portal Access Services

- 4.1 We shall grant to you, from the Commencement Date, a non-exclusive, non-transferable right, during the Term to permit Authorised Users to access the Portal (**Portal Access Services**).
- 4.2 Use of the Portal by Authorised Users shall be subject to our end-user licence agreement for use and we reserve the right to restrict any Authorised User's access to the Portal if the Authorised User has not accepted, or complied with, the terms of our end-user licence agreement.
- 4.3 In relation to the Client Users, you undertake that:
 - 4.3.1 each Client User shall keep a secure password for use of the Portal, and that each Client User shall keep their password confidential;
 - 4.3.2 only one Client User may access the Portal using a single Client User account at any one time;
 - 4.3.3 you shall permit us to audit your use of the Portal in order to establish the name and password of each Client User;
 - 4.3.4 if any audit referred to in Clause 4.3.3 reveals that any password has been provided to any individual who is not a Client User, then without prejudice to our other rights (whether under this Agreement or at law), you shall promptly disable such passwords and we shall not issue any new passwords to any such individual;
 - 4.3.5 any act or omission of any Client User (including a breach of this Agreement) shall be considered as if it was your act or omission; and
 - 4.3.6 you must promptly notify us if you become aware of any suspected breaches of this Agreement by any Client User.
- 4.4 You shall not, and you shall ensure that all Client Users shall not, access, store, distribute or transmit any Viruses, or any material during the course of your use of the Portal that:
 - 4.4.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 4.4.2 facilitates illegal activity;
 - 4.4.3 depicts sexually explicit images;
 - 4.4.4 promotes unlawful violence;
 - 4.4.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 4.4.6 in a manner that is otherwise illegal or causes damage or injury to any person or property;and we reserve the right, without liability (subject to Clause 12.2) and without prejudice to our other rights and remedies whether under this Agreement or at law, to disable your access to the Portal (or the offending material) if you or any Client User is in breach of this Clause 4.4.
- 4.5 You shall not, and you shall ensure that all Client Users shall not:
 - 4.5.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Portal in any form or media or by any means;
 - 4.5.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Portal;
 - 4.5.3 access all or any part of the Portal in order to build a product or service which competes with the Portal and/or the Services;
 - 4.5.4 use the Portal and/or the Portal Access Services to provide a competing service to third parties;
 - 4.5.5 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Portal and/or the Portal Access Services available to any third party; or
 - 4.5.6 attempt to obtain, or assist third parties in obtaining, access to the Portal and/or the Portal Access Services, except as expressly provided for by this Agreement.
- 4.6 You shall permit us or our designated auditor to audit the Portal Access Services in order to monitor your use of the Portal including your compliance with this Clause 4.
- 4.7 You shall prevent any unauthorised access to, or use of, the Portal and, in the event of any such unauthorised access or use, immediately notify us.
- 4.8 The rights provided under this Clause 4 are granted to you only and shall not be considered granted to any subsidiary or holding company of you.
- 4.9 We reserve the right, at any time, to carry out repairs, maintenance or introduce new facilities and functions in respect of all or any part of the Portal which may in turn impact upon the functionality of the Portal.
- 4.10 We shall ensure that the Portal shall, at all times, materially contain the functions and features agreed between the Parties and outlined in the Key Details Document (the **Portal Functionality**).
- 4.11 Our obligation at Clause 4.10 shall not apply to the extent of any non-conformance which is caused by:
 - 4.11.1 use of the Portal by you or any Authorised User in a manner contrary to our instructions; or
 - 4.11.2 modification or alteration of the Portal by any party other than us or our duly authorised contractors or agents.
- 4.12 If the Portal does not conform with the terms of Clause 4.10, we will, at our expense, use reasonable commercial endeavours to correct any such non-conformance promptly.
- 4.13 We shall at no additional cost, maintain and support the Portal. If we become aware of any fault or failure in the operation of the Portal (irrespective of whether or not such a fault or failure would constitute a breach of Clause 4.10), we shall use all reasonable endeavours in accordance with Good Industry Practice to keep you informed and to resolve and rectify the fault or failure, to the extent that we are able, as soon as reasonably practicable.
- 4.14 We do not warrant that your use of the Portal will be uninterrupted, timely, error-free or secure from unauthorised access, or that it will meet your individual requirements. Whilst we use our reasonable endeavours to make the Portal available, we shall not have any liability (subject to Clause 12.2) if for any reason the Portal is unavailable for any time or for any period.
- 4.15 It is your responsibility to ensure that you provide us with the information required to enable us to properly make the Portal available, and to perform our obligations under this Agreement. We shall not be responsible or have any liability (subject to Clause 12.2) for any failure to make the Portal available to the extent caused by your failure to properly ensure the provision of the relevant information to us.
- 4.16 We may, at our absolute discretion, from time to time either host the Portal on our own servers or use third party suppliers to do so in whole or in part. You acknowledge that we may from time to time without prior notice and without the need for prior agreement provide reasonable additional obligations or requirements on you or reasonably restrict your rights due to the requirements of a third-party supplier.
- 4.17 Whilst we endeavour to ensure that information and materials on or provided through the Portal are correct (included the Deliverables), no warranty or representation, express or implied, is given that they are complete, accurate, up-to-date, fit for a particular purpose and, to the extent permitted by law and we shall not have any liability (subject to Clause 12.2) for any errors or omissions.
- 4.18 We may impose restrictions on the length and manner of usage of any part of the Portal or access for any reason. If we impose restrictions on you, you must not attempt to use the Portal under any other name or user.
5. **Reporting Services – where the Key Details Document stipulates that we are to provide Reporting Services to you, the following provisions shall also apply**
- 5.1 This Agreement governs the overall relationship of the Parties in relation to the Reporting Services provided by us to you and this Clause 5 sets out the procedure for you to submit Report Requests to us.

- 5.2 You shall be entitled to submit Report Requests using the functionality available through the Portal.
- 5.3 You warrant that by submitting a Report Request to us, you have obtained the necessary consents, rights and permissions required to enable us to perform the Reporting Services, including where necessary, to contact the relevant Subject and obtain from such Subject the necessary information we require to perform the relevant Reporting Services.
- 5.4 We shall use all reasonable endeavours to accept each Report Request submitted by you but where we are unable to accept a Report Request we shall notify you and provide you with our reasons as to why such a Report Request has been rejected.
- 5.5 When we accept a Report Request in accordance with Clause 5.4, we shall update your Account so that you can view the following information in respect of the relevant Reporting Services we are to carry out:
- 5.5.1 a description of the agreed Check(s) to be carried out by us and the applicable Reporting Charge(s); and
- 5.5.2 details of the Subject who shall be the subject of the particular Check(s);
(referred to as a **Report Request Confirmation**).
- 5.6 No Report Request shall be deemed to be accepted by us until we have provided you with a Report Request Confirmation.
- 5.7 We expressly exclude all liability (subject to Clause 12.2) for the content or accuracy of the information that we receive or provide to you in providing the Reporting Services, whether from the UK Disclosure and Barring Service (**DBS**), or any other third party, and under no circumstance shall we be liable for any failure to verify the accuracy and completeness of the information provided by the DBS, or such other third party, or conducting any further investigations or controlling the time taken by the DBS, or such other third party to provide us with the information necessary for us to provide a Deliverable to you.
- 5.8 You warrant and undertake that at all times during the Term you will ensure that:
- 5.8.1 when any Report Requests are submitted where the relevant Check is in relation to the Subject's criminal history, they are submitted in accordance with the appropriate eligibility criteria stipulated by the DBS for the relevant position of employment/service and you shall pay any additional charges, or reimburse us for any additional charges we incur, as a result of your failure to comply with this obligation;
- 5.8.2 you will store, handle, retain and dispose of the applicable Deliverable, where the relevant Check is in relation to the Subject's criminal history, strictly in accordance with the DBS's explanatory Guide – "[Handling of DBS certificate information](#)"; and
- 5.8.3 you will comply with all other DBS's codes, policy requirements and regulations as amended from time to time when submitting Report Requests and handling Deliverables when the relevant Check is in relation to a Subject's criminal history.
- 5.9 It is your responsibility to ensure that any decision or implementation made by you and/or your employees, agents and other contractors as a result of any Deliverable, or any other advice, recommendation or course of action proposed by us in the provision of the Reporting Services, is made in your best interests and you shall be responsible (and, subject to Clause 12.2, we shall not have any liability) for any such decision and/or implementation including the consequences of any such decision and/or implementation.
- 5.10 Except for providing you with Deliverables in respect of any Checks we carry out, or as otherwise specifically stipulated in this Agreement, we:
- 5.10.1 shall not be responsible for providing or achieving any particular results or outcomes (within a particular time or otherwise); and
- 5.10.2 exclude all conditions, warranties, terms and obligations, whether express or implied by statute, common law or otherwise, to the fullest extent permitted by law in respect of the Reporting Services.
- 5.11 Notwithstanding Clause 8.3, on termination of this Agreement:
- 5.11.1 we shall carry out any outstanding Reporting Services if we have already provided you with a Report Request Confirmation in respect of such Reporting Services;
- 5.11.2 you shall no longer be able to submit Report Requests; and
- 5.11.3 your access to the Portal shall continue until the date 30 days after all Deliverables related to already provided Report Request Confirmations have been provided by us, so as to enable you to receive such Deliverables and export the Client Data from the Portal.
- 6. Charges and payment**
- Portal Access Charges
- 6.1 We shall invoice you, if applicable, for the Portal Access Charges in advance and on a monthly basis.
- 6.2 You agree to pay any invoice submitted by us for the Portal Access Charges under this Agreement within 14 days of the invoice's date into the bank account nominated in writing by us.
- 6.3 If at any time an invoice has not been paid by its due date for payment, we shall not be obliged to accept any further Report Requests under this Agreement until the outstanding invoice has been paid in full.
- 6.4 In the event that we wish to increase the Portal Access Fees, we shall notify you in writing no less than 60 days prior to any such increase. If you object to any such increase you may terminate this Agreement provided that you notify us in writing no less than 30 days prior to the date that such an increase is due to take effect.
- 6.5 If you are late in paying any invoice due under this Agreement then, without prejudice to any other rights we have under this Agreement or at law, we shall be entitled to:
- 6.5.1 charge interest on the overdue amount at the rate of 8 percent per annum above the Bank of England's base rate from time to time in force from the due date until payment (after as well as before judgment), such interest to run from day to day and to be compounded monthly;
- 6.5.2 recover our costs and expenses and charges (including legal and debt collection fees and costs) in collecting the late payment; and
- 6.5.3 suspend performance of this Agreement, and/or any Services until payment in full has been made (including suspending access to the Portal).
- Reporting Charges
- 6.6 Payment for our Reporting Services shall be made in advance by the Portal prompting you, prior to your submission of your first Report Request, to deposit funds into your Account. The Portal shall further prompt you, prior to the submission of any additional Report Request, when insufficient funds are in your Account. The process of depositing funds into your Account shall be managed by our payment processing partner and you agree to comply with any further terms and conditions applied by such partner from time to time.
- 6.7 When you submit a Report Request, you agree that we may deduct the applicable Reporting Charge from the funds available in your Account at such time. You acknowledge that payment of a Reporting Charge by you shall be non-refundable.
- Applicable to all Charges
- 6.8 You may not, at any time, set off any amount owing to us by you against any amount owed by us to you.
- 7. Your obligations**
- 7.1 You shall:
- 7.1.1 ensure that the instructions or directions that you provide to us in respect of the Services are complete and accurate;
- 7.1.2 ensure that the Client Systems comply with the relevant specifications provided by us from time to time;

- 7.1.3 ensure that your employees, agents and subcontractors fully co-operate with, and make themselves available at all reasonable times for discussion and meetings with, us and our employees, agents and subcontractors and to enable us to promptly perform our obligations under this Agreement;
 - 7.1.4 promptly provide to us such data, information and assistance that will enable us to carry out fully, accurately and promptly our obligations under this Agreement to the best of our ability;
 - 7.1.5 promptly comply with all of our reasonable requests in connection with this Agreement; and
 - 7.1.6 comply with all applicable laws, statutes, regulations and bye-laws in relation to the exercise of your rights and performance of your obligations under this Agreement.
- 8. Term and Termination**
- 8.1 This Agreement commences on the Commencement Date and continues, unless terminated earlier in accordance with this Clause 8, until either Party gives to the other Party prior written notice to terminate this Agreement. The required period of such notice shall be as outlined in the Key Details Document (the **Term**).
 - 8.2 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:
 - 8.2.1 the other Party is in material breach of any of its obligations under this Agreement, or any other agreement between the Parties, which is incapable of remedy;
 - 8.2.2 the other Party fails to remedy, where capable of remedy, any material breach of any of its obligations under this Agreement, or any other agreement between the Parties, after having been required in writing to do so within a period of no less than 5 Business Days;
 - 8.2.3 the other Party is in persistent breach of any of its obligations under this Agreement or any other agreement between the Parties;
 - 8.2.4 the other Party gives notice to any of its creditors that it has suspended is about to suspend payment or if such Party shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or an order is made or a resolution is passed for its winding-up or an administration order is made or an administrator is appointed to manage its affairs, business and property or a receiver and/or manager or administrative receiver is appointed in respect of all or any of its assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or administrator or which entitle the court to make a winding-up or bankruptcy order or it takes or suffers any similar or analogous action in consequence of debt in any jurisdiction;
 - 8.2.5 the other Party's financial position deteriorates to such an extent that in the terminating Party's reasonable opinion the other Party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy; or
 - 8.2.6 the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
 - 8.3 On termination of this Agreement:
 - 8.3.1 any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination, shall not be affected;
 - 8.3.2 all licences granted under this Agreement shall immediately terminate and you must immediately cease, and ensure all of your Authorised Users cease, to access or use the Portal;
 - 8.3.3 outstanding unpaid invoices rendered by us shall become immediately payable by you;
 - 8.3.4 we shall invoice you for any outstanding Charges and you shall pay any such invoice immediately upon its receipt by you; and
 - 8.3.5 any provision of this Agreement that 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.
- 9. Ownership Rights**
- 9.1 You acknowledge and agree that we, or our licensors, own all the Intellectual Property Rights in the Portal.
 - 9.2 In the event that your use of the Portal or your receipt of our Portal Access Services infringe any third party's Intellectual Property Rights, we shall be entitled to procure the right for you to:
 - 9.2.1 continue to receive the Portal Access Services;
 - 9.2.2 replace or modify the Portal and/or the Portal Access Services so that they become non-infringing; or
 - 9.2.3 if the remedies set out in Clause 9.2.1 and Clause 9.2.2 are not reasonably available, terminate this Agreement on no less than 5 Business Days' notice to you.
 - 9.3 You agree to indemnify us, keep us indemnified and defend us at your own expense, against all costs, claims, damages or expenses incurred by us or for which we may become liable, in the event that your (or a Client User's) use of the Portal in a manner not consistent with our instructions infringes any third party's Intellectual Property Rights.
 - 9.4 You shall own all right, title and interest in and to all Client Data except any Client Data that is Personal Data (which shall be owned by the applicable Data Subject) or metadata of the Client Data (aggregated and anonymised data created or extrapolated from the Client Data, which shall be owned by us).
- 10. Personal Data**
- 10.1 Each Party confirms that it holds, and during the Term will maintain, all registrations and notifications required in terms of the Data Protection Laws which are appropriate to the performance of its obligations under this Agreement.
 - 10.2 Each Party confirms that, in the performance of this Agreement, it will comply with the Data Protection Laws.
 - 10.3 The Parties acknowledge and agree that, for the purposes of the Data Protection Laws, we shall be a Controller in respect of the Personal Data provided by Authorised Users to us in their access and use of the Portal (**AU Personal Data**) and that:
 - 10.3.1 we shall Process such AU Personal Data in accordance with our privacy and cookies policy in force from time; and
 - 10.3.2 this Clause 10.3, is not applicable to the Processing of each Subject's Personal Data as part of our provision of the Reporting Services to you, including the Personal Data required to submit a Report Request, received by us from a Subject in order for us to perform a Check, or contained within a Deliverable (**Personal Subject Data**).
 - 10.4 Both Parties acknowledge that, for the purposes of the Data Protection Laws, you are the Controller and we are the Processor in respect of any Personal Subject Data.
 - 10.5 In respect of Personal Subject Data, we will:
 - 10.5.1 Process Personal Subject Data only on documented instructions from you, unless required to do so by Data Protection Laws or any other applicable law to which we are subject; in such a case, we shall inform you of that legal requirement before Processing, unless that law prohibits us to so inform you;
 - 10.5.2 ensure that persons authorised to Process the Personal Subject Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - 10.5.3 take all measures required pursuant to Article 32 of the GDPR in respect of security of Processing;

- 10.5.4 notify you as soon as reasonably practicable before appointing any subcontractor in respect of Processing any Personal Subject Data, and ensure that any such subcontractor complies with the provisions of this Clause 10 as if it was a Party; if you (acting reasonably) disagree with the appointment of the subcontractor for reasons relating to the Processing of any Personal Subject Data, you shall have the right to terminate this Agreement on no less than 30 days' written notice; for the avoidance of doubt, any appointment of subcontractors in the same corporate group or banner as an existing subcontractor (for example, a subsidiary in the UK, in a different country within the European Economic Area or otherwise any adequate jurisdictions for data processing purposes) shall not require further approval from you;
- 10.5.5 taking into account the nature of the Processing, assist you by putting in place appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of your obligation to respond to requests for exercising the Data Subject's rights laid down in Data Protection Laws, to the extent that such requests relate to this Agreement and our obligations under it;
- 10.5.6 assist you in ensuring compliance with your obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of Processing and the information available to us;
- 10.5.7 at your option, delete (to the extent practicable), put beyond use, or return all Personal Subject Data to you after termination of this Agreement or otherwise on your request, and delete existing copies (to the extent practicable) unless applicable law requires our ongoing storage of the Personal Subject Data;
- 10.5.8 make available to you all information necessary to demonstrate our compliance with this Clause 10, and allow for and reasonably contribute to audits, including inspections, conducted by you or another auditor mandated by you; and
- 10.5.9 inform you immediately if, in our opinion, an instruction from you infringes (or, if acted upon, might cause an infringement of) Data Protection Laws.
- 10.6 Each Party will notify the other Party without undue delay if it becomes aware of a Personal Data Breach relating to either Party's obligations under this Agreement.
- 10.7 You shall undertake appropriate data protection impact assessments to ensure that Processing of Personal Subject Data complies with Data Protection Laws. We will provide you with reasonable assistance, where necessary and upon your request, in carrying out any data protection impact assessment and undertaking any necessary prior consultation of the Supervisory Authority.
- 10.8 It is your responsibility to ensure that Personal Subject Data is dealt with in a way that is compliant with Article 5(1) of the GDPR.
- 10.9 It is your responsibility to ensure that:
 - 10.9.1 you are able to justify the Processing of Personal Subject Data in accordance with Article 6(1) of the GDPR (including, where applicable, obtaining any and all consents of Data Subjects required in order to commence the Processing), and that you have recorded or documented this in accordance with the record keeping requirements of the GDPR;
 - 10.9.2 where Personal Subject Data falls within the Special Categories of Personal Data, Article 9(2) of the GDPR applies to that Personal Subject Data before Processing takes place;
 - 10.9.3 where Article 9(2) of the GDPR does not apply to any Personal Subject Data falling within the Special Categories of Personal Data, no such data will be sent to us; and
 - 10.9.4 you have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Subject Data to us for the duration and purposes of this Agreement.
- 10.10 You agree to indemnify us, keep us indemnified and defend us at your own expense, against all costs, claims, damages or expenses incurred by us or for which we may become liable, arising from or in connection with a breach by you of your obligations under this Clause 10.
- 11. Confidentiality**
 - 11.1 Each Party shall keep the other Party's Confidential Information confidential and shall not:
 - 11.1.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement; or
 - 11.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Agreement.
 Each Party shall use adequate procedures and security measures to protect the other Party's Confidential Information from inadvertent disclosure or release to unauthorised persons.
 - 11.2 A Party may disclose the other Party's Confidential Information to those employees, agents and sub-contractors who need to know such Confidential Information provided that:
 - 11.2.1 it informs such employees, agents and sub-contractors of the confidential nature of the Confidential Information before disclosure; and
 - 11.2.2 it does so subject to obligations equivalent to those set out in Clause 11.1.
 - 11.3 A Party may disclose the Confidential Information of the other Party to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 11.3, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.
 - 11.4 The obligations of confidentiality in this Agreement shall not extend to any matter which either Party can show:
 - 11.4.1 is in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations of this Agreement;
 - 11.4.2 was independently developed by it;
 - 11.4.3 was independently disclosed to it by a third party entitled to disclose the same; or
 - 11.4.4 was in its written records prior to receipt.
 - 11.5 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Agreement or are granted to the other Party, or to be implied from this Agreement.
 - 11.6 On termination of this Agreement, each Party shall:
 - 11.6.1 return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;
 - 11.6.2 erase all the other Party's Confidential Information from its computer systems (to the extent possible); and
 - 11.6.3 at the request of the other Party, certify in writing to the other Party that it has complied with the requirements of this Clause 11.6, provided that a recipient Party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. Clause 11.1 shall continue to apply to any such documents and materials retained by a recipient Party following termination of this Agreement for any reason.
- 12. Limitation of liability**
 - 12.1 This Clause 12 prevails over all of this Agreement and sets forth our entire liability, and your sole and exclusive remedies, in respect of:
 - 12.1.1 our performance, non-performance, purported performance, delay in performance or mis-performance of this Agreement or any goods, services or deliverables in connection with this Agreement; or

- 12.1.2 otherwise in relation to this Agreement or entering into this Agreement.
- 12.2 We do not exclude or limit our liability for:
- 12.2.1 our fraud or fraudulent misrepresentation;
- 12.2.2 death or personal injury caused by our negligence; or
- 12.2.3 any other liability which cannot be excluded or limited by applicable law.
- 12.3 Subject to Clause 12.2, we shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any:
- 12.3.1 loss of actual or anticipated profits;
- 12.3.2 loss of revenue;
- 12.3.3 loss of business;
- 12.3.4 loss of contracts;
- 12.3.5 loss of opportunity;
- 12.3.6 loss of wasted expenditure;
- 12.3.7 loss of goodwill;
- 12.3.8 loss of, damage to, or corruption of, data; or
- 12.3.9 indirect or consequential losses, damages, costs or expenses,
- whether or not such losses were reasonably foreseeable or where us or our agents or contractors had been advised of the possibility of such losses being incurred.
- 12.4 Subject to Clause 12.2, our total aggregate liability arising out of or in connection with all claims in aggregate (including warranty claims and losses relating to the breach of warranty) shall be limited to 100 per cent of all amounts paid and total other sums payable, in aggregate, by you to us under this Agreement in the 12 months prior to the date on which the claim first arose.
- 12.5 The limitation of liability under Clause 12.4 has effect in relation both to any liability expressly provided for under this Agreement and to any liability arising by reason of the invalidity or unenforceability of any term of this Agreement.
- 13. Force majeure**
- 13.1 Subject to Clause 12.2 and not including your obligation to pay any Charges due to us under this Agreement, neither Party shall have any liability for any breach, hindrance or delay in performance of its obligations under this Agreement which is caused by an Event of Force Majeure, regardless of whether the circumstances in question could have been foreseen. An **Event of Force Majeure** means any cause outside of the Party's reasonable control, including act of God, actions or omissions of third parties (including hackers, suppliers, couriers, governments, quasi-governmental, supra-national or local authorities), insurrection, riot, civil war, civil commotion, war, hostilities, threat of war, warlike operations, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions, national emergencies, terrorism, nuclear, chemical or biological contamination or sonic boom, piracy, arrests, restraints or detentions of any competent authority, blockade, strikes or combinations or lock-out of workmen, epidemic, pandemic, fire, explosion, storm, flood, drought, adverse weather conditions, loss at sea, earthquake, natural disaster, accident, collapse of building structures, failure of plant machinery or machinery or third party computers or third party hardware, software or vehicles, failure or problems with public utility supplies (including general: electrical, telecoms, water, gas, postal, courier, communications or Internet disruption or failure), shortage of or delay in or inability to obtain supplies, stocks, storage, materials, equipment or transportation.
- 13.2 Each of the Parties agrees to inform the other upon becoming aware of an Event of Force Majeure, such information to contain details of the circumstances giving rise to the Event of Force Majeure.
- 13.3 The performance of each Party's obligations shall be suspended during the period that the circumstances persist and such Party shall be granted an extension of time for performance equal to the period of the delay.
- 13.4 Each Party shall bear its own costs incurred by the Event of Force Majeure.
- 13.5 If the performance of any obligations under this Agreement are delayed under Clause 13.1, each Party shall nevertheless accept performance as and when the other shall be able to perform.
- 13.6 If the breach, hindrance or delay caused by an Event of Force Majeure continues without a break for more than 1 month, either Party may terminate this Agreement immediately by notice to the other, in which event neither Party shall have any liability (subject to Clause 12.2) to the other Party by reason of such termination.
- 13.7 If we have contracted to provide identical or similar services to more than one customer and we are prevented from fully meeting our obligations to you due to an Event of Force Majeure, we may decide at our absolute discretion which contracts we will perform and to what extent.
- 14. Waiver**
- No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 15. Variation**
- No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 16. Rights and remedies**
- Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 17. Severance**
- 17.1 If any provision or part-provision of this is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 17 shall not affect the validity and enforceability of the rest of this Agreement.
- 17.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 18. No partnership or agency**
- Nothing in this Agreement is intended to or shall operate to create a partnership between the Parties, or authorise either Party to act as agent for the other Party, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 19. Third party rights**

This Agreement does not confer any rights on any person or party (other than the Parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

20. Notices

- 20.1 Any notice given to either Party under or in connection with this Agreement shall be in writing, addressed to the relevant Party at its registered office or such other address as that Party may have specified to the other Party in writing, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier or email.
- 20.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 20.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; and if sent by email, at the time of transmission.
- 20.3 The provisions of Clause 20.1 and Clause 20.2 shall not apply to the service of any proceedings or other documents in any legal action.

21. Variation

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

22. Assignment

You may not assign, transfer, charge or otherwise encumber, create any trust over, or deal in any manner with, this Agreement or any right, benefit or interest under it, nor transfer, novate or sub-contract any of your obligations under it, without our prior written consent.

23. Governing law and jurisdiction

- 23.1 This Agreement, and any dispute or claim arising out of or in connection with it or them or its or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.
- 23.2 Each Party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation.