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**THIS AGREEMENT** is made the

**BETWEEN:**

- (1) <<Name of Data Controller>> registered in <<Country of Registration>> under number <<Company Number>> whose registered office is at] **OR** [of] <<insert Address>> (“Data Controller”)
- (2) <<Name of Data Processor>> registered in <<Country of Registration>> under number <<Company Number>> whose registered office is at] **OR** [of] <<insert Address>> (“Data Processor”)

**WHEREAS:**

- (1) [Under a written agreement dated <<insert date>> (“the Agreement”) the Data Processor provides to the Data Controller] **OR** [The Data Processor to provide to the Data Controller the services described in Schedule 1.
- (2) The provision of the Services by the Data Processor involves it in processing the Personal Data described in Schedule 1 on behalf of the Data Controller.
- (3) Article 28(3) of the retained EU law (the “GDPR”) ((EU) 2016/679) (the “UK GDPR”) requires the Data Controller and any organisation acting on its behalf to enter into a written agreement in writing between the Data Controller and any organisation acting on its behalf, which sets out the terms and conditions governing the processing of Personal Data on its behalf, in order to ensure compliance with the said provisions of the UK GDPR.
- (4) The Parties have agreed to enter into this Agreement to ensure compliance with the said provisions of the UK GDPR.
- (5) The terms of this Agreement shall apply to all Personal Data held by the Data Processor in relation to the processing of Personal Data carried out on behalf of the Data Controller.

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**IT IS AGREED** as follows:

**1. Definitions and Interpretation**

1.1 In this Agreement, unless otherwise requires, the following expressions have the following meanings:

**“Data Controller”**

has the meaning given to the term “controller” in the Data Protection Act 2018;

**“Data Processor”**

has the meaning given to the term “processor” in the Data Protection Act 2018 and the GDPR;

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**“Data Protection Legislation”**

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legislation in force from time to time in the United Kingdom applicable to data processing, including, but not limited to, the Data Protection Act 2018 (and any amendments thereunder), and the Privacy and Electronic Communications Regulations 2003 as amended.

**“Data Subject”**

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any individual to whom the term “data subject” applies in the GDPR;

**“EEA”**

the European Economic Area, consisting of all member states of the European Union plus Iceland, Liechtenstein, and Norway;

**“Information Commissioner”**

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the Information Commissioner, as defined in Article 4(1) of the UK GDPR and section 114 of the Data Protection Act 2018;

**“Personal Data Breach”**

any breach of the GDPR or Article 4 of the UK GDPR;

**“Personal Data”**

personal data”, as defined in Article 4(1) of the GDPR, or is to be, processed by the Data Processor on behalf of the Data Controller, as defined in Article 2(1) of the GDPR;

**“processing”, “processes”, “processed”**

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any operation or set of operations which are performed on personal data, as defined in Article 4(1) of the GDPR, by automated means or otherwise;

**[“Records”**

records kept by the Data Processor of the processing activities carried out on behalf of the Data Controller as set out in sub-Clause 13.2.;

**“Services”**

the [services] AND/OR [facilities] described in Clause 13.1 which are provided by the Data Processor on behalf of the Data Controller and which the Data Processor processes for the purpose[s] described in Clause 13.1;

**“Term”**

any term of this Agreement, as set out in Clause 13.3.

1.2 Unless the context otherwise requires, the following definitions apply:

- a) “writing”, and any other form of communication, includes a reference to any communication by electronic or facsimile transmission or any other means of data transmission;
- b) a statute or regulation means a reference to that statute or regulation as in force at the relevant time;
- c) “this Agreement” means this Agreement and each of the Schedules and Appendices thereto as amended from time to time;
- d) a Schedule or Appendix means a Schedule or Appendix to this Agreement;

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reference in this Agreement to:

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- e) a Clause or paragraph of this Agreement (other than paragraph of the relevant Schedule; and
- f) a "Party" or parties to this Agreement.

- 1.3 The headings used for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4 Words imparting the masculine gender shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.
- 1.6 References to persons shall include corporations and other entities.

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2. **Scope and Application of the Agreement**

- 2.1 The provisions of this Agreement shall apply to the processing of the Personal Data described in Schedule 2 for or the Data Controller by the Data Processor, and to all such processing of Personal Data is held at the date of this Agreement or received by the Data Processor.
- 2.2 [The provisions of this Agreement shall be deemed to be incorporated into the Service Agreement in it. Subject to sub-Clause 2.3, the provisions of this Service Agreement shall apply to the interpretation of the Service Agreement.]
- 2.3 In the event of any conflict between any of the provisions of this Agreement and [the terms of any other agreement between the Parties], the provisions of this Agreement shall prevail.

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3. **Provision of the Services**

- 3.1 Schedule 2 describes the Personal Data, the category or categories of Data Subject, the processing to be carried out, the purpose(s) of the processing, and the Data Processor.
- 3.2 Subject to sub-Clause 3.1, the Data Processor is only to carry out the Services, and only on the Personal Data received from the Data Controller:
  - a) for the purpose(s) specified in Schedule 2 and not for any other purpose;
  - b) to the extent specified in Schedule 2 and as is necessary for those purposes;
  - c) strictly in accordance with the express written authorisation and instructions of the Data Controller, which may be specific instructions or instructions as otherwise notified by the Data Controller to the Data Processor.
- 3.3 The Data Controller shall remain responsible for compliance with the Data Protection Legislation including the collection, holding, and processing of the Personal Data and necessary and appropriate consents and notices to enable the Data Processor, and with the instructions given to the Data Processor.

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4. **The Data Processor's Obligations**

- 4.1 As set out above, the Data Processor shall only process the Personal Data to the extent necessary for the purposes of the Services as instructed by the Data Controller. All instructions given to the Data Processor shall be made in writing and shall not conflict with applicable Data Protection Legislation. The Data Processor shall act in accordance with the instructions from the Data Controller unless the Data Processor is prevented from doing so by domestic law to do otherwise (as per Article 29 of the UK GDPR). In such a case, the Data Processor shall inform the Data Controller in writing in question before processing the Personal Data for the purposes of the Services (if permitted from doing so by law).
- 4.2 The Data Processor shall not process Personal Data in any manner which does not comply with the instructions in this Agreement or with the Data Protection Legislation. If the Data Processor must inform the Data Controller in writing of any instructions given by the Data Controller which conflict with the Data Protection Legislation.
- 4.3 The Data Processor shall not disclose, with any written request from the Data Controller request for the Personal Data or to amend, transfer, delete (or otherwise dispose of) the Personal Data.
- 4.4 The Data Processor shall not disclose, with any written request from the Data Controller request for the Personal Data or to stop, mitigate, or remedy any unauthorised processing of the Personal Data.
- 4.5 The Data Processor shall provide reasonable assistance [(at its own cost)] to the Data Controller in complying with its obligations under the Data Protection Legislation including, but not limited to, the protection of Personal Data, the security of processing, the notification of Personal Data breaches, the conduct of data protection impact assessments, and the notification of the Information Commissioner (including, but not limited to, the Information Commissioner where a data protection impact assessment indicates that there is a high risk which cannot be mitigated).
- 4.6 For the purposes of this Agreement, "reasonable assistance" shall take into account of the nature and complexity of the information available to the Data Processor.
- 4.7 In the event that the Data Protection Legislation or any other law adversely impact its ability to process Personal Data [either directly or indirectly], the Data Processor shall notify the Data Controller promptly.

Processor shall only process the Personal Data to the extent necessary for the purposes of the Services as instructed by the Data Controller. All instructions given to the Data Processor shall be made in writing and shall not conflict with applicable Data Protection Legislation. The Data Processor shall act in accordance with the instructions from the Data Controller unless the Data Processor is prevented from doing so by domestic law to do otherwise (as per Article 29 of the UK GDPR). In such a case, the Data Processor shall inform the Data Controller in writing in question before processing the Personal Data for the purposes of the Services (if permitted from doing so by law).

The Data Processor shall not process Personal Data in any manner which does not comply with the instructions in this Agreement or with the Data Protection Legislation. If the Data Processor must inform the Data Controller in writing of any instructions given by the Data Controller which conflict with the Data Protection Legislation.

The Data Processor shall not disclose, with any written request from the Data Controller request for the Personal Data or to amend, transfer, delete (or otherwise dispose of) the Personal Data.

The Data Processor shall not disclose, with any written request from the Data Controller request for the Personal Data or to stop, mitigate, or remedy any unauthorised processing of the Personal Data.

The Data Processor shall provide reasonable assistance [(at its own cost)] to the Data Controller in complying with its obligations under the Data Protection Legislation including, but not limited to, the protection of Personal Data, the security of processing, the notification of Personal Data breaches, the conduct of data protection impact assessments, and the notification of the Information Commissioner (including, but not limited to, the Information Commissioner where a data protection impact assessment indicates that there is a high risk which cannot be mitigated).

For the purposes of this Agreement, "reasonable assistance" shall take into account of the nature and complexity of the information available to the Data Processor.

In the event that the Data Protection Legislation or any other law adversely impact its ability to process Personal Data [either directly or indirectly], the Data Processor shall notify the Data Controller promptly.

5. **Confidentiality**

- 5.1 The Data Processor shall process Personal Data in confidence, and in particular, unless the Data Controller has given written consent for the Data Processor to do so, shall not disclose the Personal Data to any third party. The Data Processor shall not process or make any use of any Personal Data supplied to it by the Data Controller otherwise than as necessary and for the purposes of the provision of the Services to the Data Controller.
- 5.2 Nothing in this Agreement shall prevent the Data Processor from complying with any requirements of applicable law to process Personal Data where such

Personal Data in confidence, and in particular, unless the Data Controller has given written consent for the Data Processor to do so, shall not disclose the Personal Data to any third party. The Data Processor shall not process or make any use of any Personal Data supplied to it by the Data Controller otherwise than as necessary and for the purposes of the provision of the Services to the Data Controller.

Nothing in this Agreement shall prevent the Data Processor from complying with any requirements of applicable law to process Personal Data where such

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disclosure or processing (including, but not limited to, the Data Processor's processing requirements) is prohibited unless notification is prohibited or the Data Controller may challenge the requirement.

domestic law, court, or regulator (including the Information Commissioner). In such cases, the Data Controller of the disclosure or processing (unless such disclosure or processing is prohibited) in order that the Data Controller may challenge the requirement.

5.3 The Data Processor shall ensure that only employees who are to access and/or process any of the Personal Data are contractually obliged to keep such Personal Data confidential.

employees who are to access and/or process any of the Personal Data are contractually obliged to keep such Personal Data confidential.

6. **Employees [and Data Protection Officers]**

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6.1 [The Data Controller shall ensure that the Data Protection Officer is appointed in accordance with Article 37 of the GDPR and the details of data protection of the Personal Data.]

a data protection officer in accordance with the details are as follows: <<insert name and details>>.]

6.2 [The Data Processor shall ensure that the Data Protection Officer is appointed in accordance with Article 37 of the GDPR and the details of data protection of the Personal Data.]

a data protection officer in accordance with the details are as follows: <<insert name and details>>.]

**OR**

6.2 [The Data Processor shall ensure that the Data Protection Officer is appointed in accordance with Article 37 of the UK GDPR and the details of the data protection of the Personal Data.]

data protection officer in accordance with the details of the data protection of the Personal Data at the commencement of the processing of the Personal Data.]

6.3 The Data Processor shall ensure that employees who are to access and/or process any of the Personal Data are given suitable training on the Data Protection Legislation and the Data Controller's obligations under it, their obligations under it, their work, with particular regard to the processing of the Personal Data in accordance with this Agreement.

employees who are to access and/or process any of the Personal Data are given suitable training on the Data Controller's obligations under it, their obligations under it, their work, with particular regard to the processing of the Personal Data in accordance with this Agreement.

7. **Security of Processing**

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7.1 The Data Processor shall implement appropriate technical and organisational measures [as reviewed by the Data Controller and] **OR** [,] as necessary to protect the Personal Data against unauthorised access, loss, destruction, or disclosure. The Data Controller shall be informed in advance of the measures implemented.

appropriate technical and organisational measures [as reviewed by the Data Controller and] **OR** [,] as necessary to protect the Personal Data against unauthorised access, loss, destruction, or disclosure. The Data Processor shall inform the Data Controller in advance of the measures implemented.

7.2 The measures implemented by the Data Processor shall be appropriate to the nature of the personal data, the risks to the rights and freedoms of Data Subjects) and shall take into account the state of technological development and the costs of implementation.

The measures implemented by the Data Processor shall be appropriate to the nature of the personal data, the risks to the rights and freedoms of Data Subjects) and shall take into account the state of technological development and the costs of implementation.

7.3 The measures implemented by the Data Processor may include, as appropriate, pseudonymisation of the Personal Data; the ability to ensure the ongoing availability, integrity, availability, and resilience of processing systems and the ability to restore the availability of and access to the Personal Data in the event of a physical or technical incident; and the regular testing, assessing, and evaluating the effectiveness of the measures.

The Data Processor may include, as appropriate, pseudonymisation of the Personal Data; the ability to ensure the ongoing availability, integrity, availability, and resilience of processing systems and the ability to restore the availability of and access to the Personal Data in the event of a physical or technical incident; and the regular testing, assessing, and evaluating the effectiveness of the measures.

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7.4 The Data Processor shall, by the Data Controller (and within the timescales required by the Data Controller) supply further details of the technical and organisational measures implemented to safeguard the security of the Personal Data held against unauthorised access.

7.5 [The Data Processor shall implement all technical and organisational measures in writing on a <<insert frequency>> basis to ensure that they remain up to date.]

8. **Data Subject Rights and Complaints**

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8.1 The Data Processor shall implement appropriate technical and organisational measures and provide assistance in response to a Data Subject request in complying with its obligations under the Data Protection Legislation in particular regard to the following:

- a) the rights conferred by the Data Protection Legislation including, but not limited to, the right of access (data subject access requests), the right to erasure, portability rights, the right to restriction of processing, and the right to object, rights relating to automated decision making, and profiling;
- b) compliance with the Data Protection Legislation on the Data Controller by the Data Processor in accordance with the Data Protection Legislation.

8.2 In the event that the Data Processor receives any notice, complaint, or other communication relating to a breach of the Data Protection Legislation or to either Party's non-compliance with the Data Protection Legislation, it shall notify the Data Controller immediately.

8.3 In the event that the Data Processor receives any request from a Data Subject to exercise any of the rights conferred by the Data Protection Legislation including, but not limited to, the right of access, it shall notify the Data Controller [immediately or within a reasonable delay].

8.4 The Data Processor shall, at its own cost) **OR** [(at the Data Controller's cost)] provide all reasonable assistance in response to a Data Subject request, notice, other communication, or complaint, including, but not limited to, providing the full details of the complaint or request;

- a) providing the full details of the complaint or request;
- b) providing the Data Subject with a subject access request and assistance in order to comply with a subject access request;
- c) providing the Data Subject with a copy of any Personal Data it holds in relation to a Data Subject request, within the timescales required by the Data Protection Legislation; and
- d) providing the Data Subject with any other information requested by the Data Subject.

8.5 The Data Processor shall not disclose any Personal Data to any other party except as instructed by the Data Controller, or as required by domestic law.

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9. **Personal Data Breaches**

9.1 The Data Processor shall notify the Data Controller (hours)>>] (and with the Data Controller as soon as possible, but no later than 72 hours, after the Data Processor becomes aware of a Personal Data Breach, including but not limited to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data.)

OR [within <<insert time limit>>] the Data Controller in writing if it becomes aware of a Personal Data Breach including, but not limited to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data.)

9.2 When the Data Processor becomes aware of a Personal Data Breach, it shall notify the Data Controller in writing without undue delay:

of a Personal Data Breach, it shall notify the Data Controller in writing without undue delay:

- a) a description of the Personal Data Breach including the category or categories of Personal Data involved, the number (approximate or exact, if known) of Personal Data Subjects involved, and the number of Personal Data Subjects involved;
- b) the likely consequences of the Personal Data Breach; and
- c) a description of the measures taken to address the Personal Data Breach and any other appropriate, measures to mitigate its possible adverse effects.

of a Personal Data Breach, it shall notify the Data Controller in writing without undue delay: a) a description of the Personal Data Breach including the category or categories of Personal Data involved, the number (approximate or exact, if known) of Personal Data Subjects involved, and the number of Personal Data Subjects involved; b) the likely consequences of the Personal Data Breach; and

9.3 In the event of a Personal Data Breach, the Parties shall cooperate with one another to contain the Personal Data Breach and shall provide all reasonable assistance to the Data Controller:

described above, the Parties shall cooperate with one another to contain the Personal Data Breach and shall provide all reasonable assistance to the Data Controller:

- a) assisting the Data Controller in its investigation of the Personal Data Breach;
- b) providing all relevant facts and information, including but not limited to former personnel of the Data Processor who may have been involved in the Personal Data Breach;
- c) making available to the Data Controller all records, files, reports, and similar as reasonably necessary to the Data Controller or as otherwise required by law or the Data Controller's internal policies;
- d) promptly taking such other measures as may be necessary to mitigate the effects of the Personal Data Breach and to prevent or minimize any damage caused by it.

described above, the Parties shall cooperate with one another to contain the Personal Data Breach and shall provide all reasonable assistance to the Data Controller: The Data Processor shall provide all reasonable assistance to the Data Controller including, but not limited to: a) assisting the Data Controller in its investigation of the Personal Data Breach; b) providing all relevant facts and information, including but not limited to former personnel of the Data Processor who may have been involved in the Personal Data Breach;

9.4 The Data Processor shall take all reasonable endeavours to restore any Personal Data lost, destroyed, corrupted, or otherwise rendered unusable in the event of a Personal Data Breach as soon as possible after becoming aware of the Personal Data Breach.

described above, the Parties shall cooperate with one another to contain the Personal Data Breach and shall provide all reasonable assistance to the Data Controller: The Data Processor shall take all reasonable endeavours to restore any Personal Data lost, destroyed, corrupted, or otherwise rendered unusable in the event of a Personal Data Breach as soon as possible after becoming aware of the Personal Data Breach.

9.5 The Data Processor shall not disclose any Personal Data Breach as described above to any third party of any Personal Data Breach as described above without the express written consent of the Data Controller unless it is required by law or domestic law.

described above, the Parties shall cooperate with one another to contain the Personal Data Breach and shall provide all reasonable assistance to the Data Controller: The Data Processor shall not disclose any Personal Data Breach as described above to any third party of any Personal Data Breach as described above without the express written consent of the Data Controller unless it is required by law or domestic law.

9.6 The Data Controller shall have the right to determine whether or not to notify affected Data Subjects, the Information Commissioner, law enforcement agencies, or other relevant authorities of the Personal Data Breach as required by law or the Data Controller's internal policies, or at the Data Controller's discretion, including in the event of a Personal Data Breach.

described above, the Parties shall cooperate with one another to contain the Personal Data Breach and shall provide all reasonable assistance to the Data Controller: The Data Controller shall have the right to determine whether or not to notify affected Data Subjects, the Information Commissioner, law enforcement agencies, or other relevant authorities of the Personal Data Breach as required by law or the Data Controller's internal policies, or at the Data Controller's discretion, including in the event of a Personal Data Breach.

9.7 The Data Controller shall have the right to determine whether or not to offer any remedy to affected Data Subjects in the event of a Personal Data Breach, including the form and content of any such remedy.

described above, the Parties shall cooperate with one another to contain the Personal Data Breach and shall provide all reasonable assistance to the Data Controller: The Data Controller shall have the right to determine whether or not to offer any remedy to affected Data Subjects in the event of a Personal Data Breach, including the form and content of any such remedy.

9.8 Subject to the provisions of this Agreement, the Data Processor shall bear all reasonable costs and expenses incurred by the Data Controller for all reasonable costs and expenses incurred by the Data Processor in connection with the Personal Data Breach.

described above, the Parties shall cooperate with one another to contain the Personal Data Breach and shall provide all reasonable assistance to the Data Controller: Subject to the provisions of this Agreement, the Data Processor shall bear all reasonable costs and expenses incurred by the Data Controller for all reasonable costs and expenses incurred by the Data Processor in connection with the Personal Data Breach.



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Controller in response to any functions or capabilities under any provision of this Agreement, or otherwise. The Data Controller shall reimburse the Data Processor with such costs and expenses

a Breach, including the exercise of functions by the Data Controller under any provision of this Agreement, or otherwise. The Data Controller shall reimburse the Data Processor with such costs and expenses

10. **Personal Data Transfers**

The Data Processor [(and its subcontractors)] shall not process or transfer the Personal Data

to the EEA]

outside of the EEA [(as defined by it)] shall not process or transfer the Personal Data to the EEA].

11. **Appointment of Subcontractors**

11.1 The Data Processor shall not appoint any subcontractor to process any Personal Data on its behalf without the prior written consent of the Data Controller [(such consent not to be unreasonably withheld)]

any of its obligations or rights under this Agreement without the prior written consent of the Data Controller [(such consent not to be unreasonably withheld)]

11.2 In the event that the Data Processor appoints a subcontractor to process any Personal Data on a per-subcontract basis, the Data Processor shall:

appoint a subcontractor to process any Personal Data on its behalf without the prior written consent of the Data Controller [(such consent not to be unreasonably withheld)]

- a) enter into a subcontract which shall impose upon the subcontractor the same technical and organisational security measures as are required by this Agreement, the Data Protection Legislation, and which shall terminate automatically if the subcontractor fails to comply with the Data Protection Legislation;

each subcontractor, which shall impose upon the subcontractor the same obligations, on substantially the same basis, as are required by this Agreement, the Data Protection Legislation, and which shall terminate automatically if the subcontractor fails to comply with the Data Protection Legislation;

- b) at the written request of the Data Controller, provide copies of such subcontract agreements to the Data Controller;

at the written request of the Data Controller, provide copies of such subcontract agreements to the Data Controller;

- c) ensure that the subcontractor complies fully with their obligations under the Data Protection Legislation; and

comply fully with their obligations under the Data Protection Legislation; and

- d) maintain control of the Personal Data transferred to subcontractors.

maintain control of the Personal Data transferred to subcontractors.

11.3 In the event that a subcontractor fails to meet its data protection obligations, the Data Processor shall be liable to the Data Controller for the subcontractor's compliance with its data protection obligations.

meet its data protection obligations, the Data Processor shall be liable to the Data Controller for the subcontractor's compliance with its data protection obligations.

11.4 The Data Processor shall ensure that it legally control any and all Personal Data that may be processed on its behalf, or be in the possession of, any subcontractor appointed under this Clause 11.

legally control any and all Personal Data that may be processed on its behalf, or be in the possession of, any subcontractor appointed under this Clause 11.

12. **Return and/or Deletion of Personal Data**

12.1 The Data Processor shall, at the request of the Data Controller, delete (or otherwise dispose of) the Personal Data or return it to the Data Controller in the format(s) reasonably requested by the Data Controller, within a reasonable time after the earlier of the following:

Personal Data

request of the Data Controller (and at the request of the Data Controller) delete (or otherwise dispose of) the Personal Data or return it to the Data Controller in the format(s) reasonably requested by the Data Controller, within a reasonable time after the earlier of the following:

- a) [the end of the term of the Agreement]; or

the end of the term of the Agreement; or

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OR

a) [the termination of the Agreement, for any reason; or]

b) the processing of Personal Data by the Data Processor is no longer required under [this Agreement] of the Data Processor's obligations under [this Agreement].

12.2 Subject to sub-Clause 12.1, the Data Processor shall not retain all or any part of the Personal Data (including copies) being (or otherwise disposing of) or returning it under sub-Clause 12.1.

12.3 If the Data Processor is required to retain copies of all or any part of the Personal Data by law, a court order, government, or other regulatory body, it shall inform the Data Controller in writing of the requirement(s) in writing, including the precise details of the requirement(s) required to retain, the legal basis for the retention, details of the Personal Data to be retained, and when the retained Personal Data will be disposed of (including when it is disposed of) once it is no longer required to retain it.

12.4 [The Data Processor shall retain copies of the Personal Data for up to <<insert period>> for [insert purpose] only.]

12.5 Upon the deletion (or disposal) of Personal Data, the Data Processor shall certify the completion of the deletion (or disposal) to the Data Controller within <<insert period>> of the deletion (or disposal).

12.6 [All Personal Data transferred under this Agreement shall be deleted or disposed of using the following method(s): <<insert description of method(s)>>.]

13. Information [and Records]

13.1 The Data Processor shall provide to the Data Controller any and all such information as the Data Controller may request and necessary to demonstrate the Data Processor's compliance with the Data Protection Legislation and this Agreement.

13.2 [The Data Processor shall maintain accurate, and up-to-date written Records of all processing activities carried out by the Data Processor on behalf of the Data Controller. These Records shall include:

a) the name and contact details of the Data Processor and the Data Controller and the name and contact details of each Party's representative and data protection officer;

b) the categories of Personal Data processed by the Data Processor; and

c) a general description of the technical and organisational security measures implemented by the Data Processor. [See Clause 7.]

14. Audits

14.1 The Data Processor shall allow the Data Controller or a third-party auditor to audit (or be audited) at <<insert period>> days' [reasonable] prior to the audit by the Data Processor or a third-party auditor appointed by the Data Controller to verify the Data Processor's compliance with its obligations under the Data Protection Legislation.

14.2 The Data Processor shall provide the Data Controller with the necessary assistance [(at its own cost)] to carry out the audit.

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OR [(at the Data Controller's option) to, and copies of, all [Records and any other information] held by the Data Processor;

conduct of such audits including, but not limited to:

- a) access (including, but not limited to, access to all the Personal Data processed by the Data Processor) to, and copies of, all [Records and any other information] held by the Data Processor;
- b) access to all the Personal Data processed by the Data Processor, to access and/or process any of the Personal Data, where such access is reasonably necessary, arranging for the Data Processor to provide such access to its staff and such employees; and
- c) access to any and all [Records,] infrastructure, equipment, software, and other resources used to store and/or process the Personal Data.

te) to, and copies of, all [Records and any other information] held by the Data Processor;

to access and/or process any of the Personal Data, where such access is reasonably necessary, arranging for the Data Processor to provide such access to its staff and such employees; and

records,] infrastructure, equipment, software, and other resources used to store and/or process the Personal Data.

14.3 The requirement for the Data Processor to give notice under sub-Clause 14.1 shall not apply if the Data Processor is in breach of the Data Protection Legislation or if the Data Controller has reasonable grounds to believe that a Personal Data Breach has taken place.

give notice under sub-Clause 14.1 shall not apply if the Data Processor is in breach of the Data Protection Legislation or if the Data Controller has reasonable grounds to believe that a Personal Data Breach has taken place.

14.4 The Data Processor shall give notice to the Data Controller [immediately] OR [promptly] if, in its capacity as a third-party auditor or as a Data Protection Leg

Data Controller [immediately] OR [promptly] if, in its capacity as a third-party auditor or as a Data Controller do not comply with the

15. **Warranties**

15.1 The Data Controller warrants that the Personal Data and its use with respect to the Service Agreement shall comply with the Data Protection Legislation in all respects including, but not limited to, the collection, holding, and processing.

represents that the Personal Data and its use with respect to the Service Agreement and this Data Protection Legislation in all respects including, but not limited to, the collection, holding, and processing.

15.2 The Data Processor warrants that:

represents that:

- a) the Personal Data is processed by the Data Processor (and by any subcontractors) in compliance with the Data Protection Legislation, any and all other relevant laws, regulations, standards, and other similar instruments;
- b) it has no reasonable grounds to believe that its processing of the Personal Data in any way prevents or hinders its compliance with its obligations [pertaining to the Service Agreement]; and
- c) it will implement appropriate technical and organisational measures to protect the Personal Data against any loss, destruction, or damage, as set out in Clause 7 and Clause 8.

processed by the Data Processor (and by any subcontractors) in compliance with the Service Agreement (Clause 11) in compliance with the Data Protection Legislation, any and all other relevant laws, regulations, standards, and other similar instruments;

Data Protection Legislation in any way prevents or hinders its compliance with its obligations [pertaining to the Service Agreement]; and

al and organisational measures to protect the Personal Data against any loss, destruction, or damage, as set out in Clause 7 and Clause 8.

16. **Liability and Indemnity**

16.1 The Data Controller shall indemnify (and keep indemnified) the Data Processor in respect of, any and all actions, proceedings, liabilities, claims, damages, expenses (including reasonable legal fees and payments on a client basis), or demands, suffered or incurred by, awarded to, or payable to, the Data Processor [and any subcontractors] arising directly or indirectly from the Data Processor's performance of its obligations under Clause 11]

and shall indemnify (and keep indemnified) the Data Processor in respect of, any and all actions, proceedings, liabilities, claims, damages, expenses (including reasonable legal fees and payments on a client basis), or demands, suffered or incurred by, awarded to, or payable to, the Data Processor [and any subcontractors] arising directly or indirectly from the Data Processor's performance of its obligations under Clause 11]

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- a) any non-compliance with the Data Protection Legislation;
- b) any Personal Data processed or to be processed out by the Data Processor [or any subcontractor appointed by the Data Processor under Clause 11] in accordance with the instructions given by the Data Controller to the extent that the Data Processor or subcontractor is in breach of the Data Protection Legislation; or
- c) any breach by the Data Processor of its obligations or warranties under this Agreement.

but not to the extent that the liability is contributed to by any non-compliance by the Data Processor or subcontractor appointed by the Data Processor under Clause 11 with the Data Protection Legislation or its obligations or warranties under this Agreement.

16.2 The Data Processor shall indemnify (and keep indemnified) the Data Controller in respect of, any and all actions, proceedings, liabilities, claims, damages, costs, expenses (including reasonable legal fees and payments on a no win no fee client basis), or demands, suffered or incurred by, awarded to or in favour of, or to be paid by, the Data Controller arising directly or indirectly from or in connection with:

- a) any non-compliance by the Data Processor [or any subcontractor appointed by the Data Processor under Clause 11] with the Data Protection Legislation;
- b) any Personal Data processed or to be processed out by the Data Processor [or any subcontractor appointed by the Data Processor under Clause 11] in accordance with the instructions given by the Data Controller to the extent that the Data Processor or subcontractor is in breach of the Data Protection Legislation; or
- c) any breach by the Data Processor of its obligations or warranties under this Agreement.

but not to the extent that the liability is contributed to by any non-compliance by the Data Processor or subcontractor appointed by the Data Processor under Clause 11 with the Data Protection Legislation or its obligations or warranties under this Agreement.

16.3 The Data Controller shall indemnify (and keep indemnified) the Data Processor under sub-clause 16.2 in respect of any and all actions, proceedings, liabilities, claims, damages, costs, expenses (including reasonable legal fees and payments on a no win no fee client basis), or demands, suffered or incurred by, awarded to or in favour of, or to be paid by, the Data Processor arising directly or indirectly from or in connection with:

16.4 Nothing in this Agreement shall limit the liability of either Party of, or in respect of, any and all actions, proceedings, liabilities, claims, damages, costs, expenses (including reasonable legal fees and payments on a no win no fee client basis), or demands, suffered or incurred by, awarded to or in favour of, or to be paid by, the Data Processor arising directly or indirectly from or in connection with the Data Processor's direct obligations under the Data Protection Legislation. In particular, this Clause 16) shall relieve the liability of either Party to any Data Processor's direct obligations under the Data Protection Legislation. In particular, the Data Processor hereby acknowledges that it shall indemnify the Data Controller to the authority of the Information Commissioner and the Information Commissioner and shall indemnify the Data Controller for any failure to comply with the Data Protection Legislation. In particular, the Data Processor hereby acknowledges that it shall indemnify the Data Controller for any failure to comply with the Data Protection Legislation and shall indemnify the Data Controller for any failure to comply with the compensation requirements of the Data Protection Legislation.

16.5 Nothing in this Clause shall limit the liability of either Party of, or in respect of, any and all actions, proceedings, liabilities, claims, damages, costs, expenses (including reasonable legal fees and payments on a no win no fee client basis), or demands, suffered or incurred by, awarded to or in favour of, or to be paid by, the Data Processor arising directly or indirectly from or in connection with the Data Processor's direct obligations under the Data Protection Legislation. In particular, this Clause 16) shall relieve the liability of either Party to any Data Processor's direct obligations under the Data Protection Legislation. In particular, the Data Processor hereby acknowledges that it shall indemnify the Data Controller to the authority of the Information Commissioner and the Information Commissioner and shall indemnify the Data Controller for any failure to comply with the Data Protection Legislation. In particular, the Data Processor hereby acknowledges that it shall indemnify the Data Controller for any failure to comply with the Data Protection Legislation and shall indemnify the Data Controller for any failure to comply with the compensation requirements of the Data Protection Legislation.

16.6 [Any limit of liability, damages, costs, expenses (including reasonable legal fees and payments on a no win no fee client basis), or demands, suffered or incurred by, awarded to or in favour of, or to be paid by, the Data Processor arising directly or indirectly from or in connection with the Data Processor's direct obligations under the Data Protection Legislation. In particular, this Clause 16) shall relieve the liability of either Party to any Data Processor's direct obligations under the Data Protection Legislation. In particular, the Data Processor hereby acknowledges that it shall indemnify the Data Controller to the authority of the Information Commissioner and the Information Commissioner and shall indemnify the Data Controller for any failure to comply with the Data Protection Legislation. In particular, the Data Processor hereby acknowledges that it shall indemnify the Data Controller for any failure to comply with the Data Protection Legislation and shall indemnify the Data Controller for any failure to comply with the compensation requirements of the Data Protection Legislation.]

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17. **Term and Termination**

- 17.1 This Agreement shall continue in force and effect until the date of termination or expiry (insert commencement date>> and shall continue in force and effect until the date of termination or expiry (insert commencement date>> and
  - a) [The duration of this Agreement shall be as set out in Schedule 1; or]

**OR**

  - a) [The period of this Agreement shall remain in effect; or]
  - b) The period of this Agreement shall be the period during which the Party has any of the Personal Data in its possession or control.
- 17.2 Any provision of this Agreement, whether expressly or by implication, is to come into force or remain in effect until the date of termination or expiry (insert commencement date>> and shall remain in full force and effect until the date of termination or expiry (insert commencement date>> and
- 17.3 In the event that changes in applicable Data Protection Legislation necessitate the renegotiation of any part of this Agreement, either Party may require such renegotiation.

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18. **Notices**

- 18.1 All notices under or in connection with this Agreement shall be in writing.
- 18.2 All notices given to or received by a Party under or in connection with this Agreement must be in writing and must specify (insert name, position (e.g. data protection officer), and address).
- 18.3 All notices given to or received by a Party under or in connection with this Agreement must be in writing and must specify (insert name, position (e.g. data protection officer), and address).
- 18.4 Notices shall be deemed to have been given:
  - a) when delivered to the recipient by hand or by registered mail;
  - b) when sent, by post, by e-mail [or by text message or mobile or] e-mail [and a successful transmission is generated]; or
  - c) on the fifth business day after the date of posting by ordinary mail.

In each case notice shall be deemed to have been given at the address indicated above.

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19. **Law and Jurisdiction**

- 19.1 This Agreement (including any dispute, controversy or claim arising therefrom or associated with it) shall be governed by, and construed in accordance with, the law of England and Wales.
- 19.2 Any dispute, controversy or claim between the Parties relating to this Agreement (including any dispute, controversy or claim arising therefrom or associated with it) shall be governed by, and construed in accordance with, the law of England and Wales.

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SIGNED for and on behalf of the D  
<<Name and Title of person signing>>

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\_\_\_\_\_  
Authorised Signature

Date: \_\_\_\_\_

SIGNED for and on behalf of the D  
<<Name and Title of person signing>>

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\_\_\_\_\_  
Authorised Signature

Date: \_\_\_\_\_

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**Services**

<<Insert a detailed description of the Services provided by the Data Processor (under the Service Agreement, where relevant)>>

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SCHEDULE 2

Personal Data

Type of Personal Data	Category	Nature of Processing Carried Out	Purpose(s) of Processing	Duration of Processing



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**Technical and Organisational Data Protection Measures**

The following are the technical and organisational data protection measures referred to in Clause 7:

1. The Data Processor shall ensure that appropriate technical and organisational measures are in place to protect all Personal Data it receives from the Data Controller and to maintain security measures to a standard appropriate to:
  - 1.1 the harm that might result from the loss of, or unauthorised processing or disclosure of, the Personal Data; and
  - 1.2 the nature of the Personal Data.
  
2. In particular, the Data Processor shall:
  - 2.1 have in place, and ensure that the Data Controller is aware of, a data protection policy which:
    - a) defines security measures, including risk assessment;
    - b) allocates responsibility for implementing the policy to a specific individual [(the Data Controller's data protection officer)] or personnel;
    - c) is provided to the Data Controller prior to or before the commencement of this Agreement;
    - d) is disseminated to all personnel;
    - e) provides a mechanism for monitoring and review.
  - 2.2 ensure that appropriate technical and organisational measures and virus protection are in place to protect the hardware used in processing the Personal Data in accordance with the policy;
  - 2.3 ensure that all hardware used in the processing of the Personal Data is properly maintained, including, but not limited to, the installation of all applicable software;
  - 2.4 prevent unauthorised access to Personal Data;
  - 2.5 protect the Personal Data by the use of encryption>> encryption;
  - 2.6 protect the Personal Data by the use of physical security measures, where it is practical to do so;
  - 2.7 ensure that its storage of Personal Data conforms with best industry practice such that the media used to store Personal Data is recorded (including paper records and records stored electronically) are stored in secure locations and are properly protected, monitored and controlled;
  - 2.8 have secure methods in place to control the transfer of Personal Data whether in physical form (for example, by post) or electronic form (for example, by email) (<<describe requirements, e.g. encryption>> encryption);
  - 2.9 password protect all devices on which Personal Data is stored, ensuring that passwords are strong (upper and lower-case letters, numbers and special characters etc.>>), and that passwords are not shared under any circumstances.

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- 2.10 [not allow the storage of Personal Data on any mobile devices such as laptops or tablets unless they are kept on its premises at all times;]
- 2.11 take reasonable steps to ensure the security of personnel who have access to the Personal Data;
- 2.12 ensure that all employees who access and/or process any of the Personal Data are trained in the Data Protection Legislation, their obligations under it, and its application to their role in regard to the processing of the Personal Data under the Data Protection Legislation;
- 2.13 have in place methods for dealing with breaches of security (including loss, damage or unauthorised access to Personal Data) including:
  - 2.13.1 the ability to identify individuals who have worked with specific Personal Data;
  - 2.13.2 having a procedure for investigating and remedying breaches of the Data Protection Legislation; and
  - 2.13.3 notifying the Data Controller as soon as any such security breach occurs.
- 2.14 have a secure procedure for storing back-ups securely of all electronic Personal Data and any other Personal Data;
- 2.15 have a secure method for storing back-ups, disks, printouts and other Personal Data including for equipment; [and]
- 2.16 [<<insert additional methods for storing back-ups, disks, printouts and other Personal Data>>]; and]
- 2.17 adopt such organisational and technological processes and procedures as are necessary to comply with the requirements of ISO/IEC 27001:2013, as applicable, and as provided to the Data Controller.

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