

**CLOUDSTUFF LIMITED: TERMS AND CONDITIONS  
FOR USE OF THE "SMARTCONSIGN" BOOKING SOLUTION  
(these "Terms and Conditions")**

**1. DEFINITIONS**

In this Agreement:

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

**"Account"**: the "SmartConsign" account we allocate to you upon registration to enable your access and use of the Solution;

**"Agreement"**: the legal and binding agreement in place on the basis of these Terms and Conditions and the Proposal, for us to make the Solution available to you;

**"API"**: the application programming interface which enables access to the Solution directly through your computer system;

**"API Key"**: the access key provided by us to you to enable your API to access the Solution;

**"Booking"**: the booking that you place using the Solution, subject to this Agreement and the Provider Terms.

**"Breach of Duty"**: the breach of any: (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract; or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty);

**"Business Day"**: any day other than: (i) a Saturday; (ii) a Sunday; or (iii) a day when the clearing banks in the City of London are not physically open for business;

**"Client", "you" or "your"**: the user of the Service and recipient of Provider Services under this Agreement;

**"Consignment"**: each parcel or group of parcels being sent using the Provider Services;

**"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, whether 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 GDPR;

**"Customer Data"**: the data inputted by you, or us on your behalf, into the Solution;

**"Data Protection Laws"**: in relation to any Personal Data which is Processed in the performance of this Agreement, the Data Protection Act 1998 and EU Data Protection Directive 95 / 46 / EC (prior to 25 May 2018), the General Data Protection Regulation (EU 2016/679) ("**GDPR**") (on and after 25 May 2018), the Investigatory Powers Act 2016, Telecommunications (Lawful Business Practice), the Privacy and Electronic Communications Directive 2002 / 58 / EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003 / 2426), in each case together with all laws implementing or supplementing the same and any other applicable or equivalent data protection or privacy laws, and all other applicable law, regulations and codes of conduct relating to the processing of personal data and privacy, including the guidance and codes of practice issued by a relevant Supervisory Authority;

**"Data Sharing Summary"**: the document setting out the scope, nature and purpose of Processing by us, the duration of the Processing, the types of Personal Data that we are to Process, and the categories of Data Subject;

**"Data Subject"**: has the meaning set out in GDPR;

**"Fees"**: the Registration Fee, the Subscription Fee and the Label Fee;

**"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;

**"Label Fee"**: the fee payable by you to us for each Booking, as set out in the Proposal;

**"Liability"**: liability in or for breach of contract, Breach of Duty, torts (including negligence and intentional torts), deliberate breach (including deliberate personal repudiatory breach), misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement (and, for the purposes of this definition, all references to "**this Agreement**" shall be deemed to include any collateral contract);

**"Party"**: us or you, and "**Parties**" means both of us and you;

**"Personal Data"**: has the meaning set out in Data Protection Laws, and only related to personal data, or any part of such personal data of which you are the Controller and in relation which we are the Processor providing services under this Agreement;

**"Personal Data Breach"**: has the meaning set out in GDPR;

**"Processor"**: has the meaning set out in GDPR;

**"Process/Processing"**: has the meaning set out in GDPR;

**"Proposal"**: the form we require you to accept upon registration for the Solution;

**"Provider"**: a third-party supplier of courier or delivery services;

**"Provider Account"**: your pre-existing account with a Provider that enables you to request the Provider's Services on a case by case basis;

**"Provider Information Form"**: the form we require you to complete to enable you to make a Booking with a Provider using the Solution;

**"Provider Services"**: the courier or delivery services provided by a third-party supplier of courier or delivery services;

**"Provider Terms"**: the terms and conditions for the Provider Services;

**"Registration Fee"**: the fee payable by you upon registration for an Account, as set out in the Proposal.

**"Service"**: the service provided by us to you, through the Solution to allow you to book Provider Services;

**"Solution"**: the cloud-based website, SaaS platform, API or any other medium we make available, through which you are able to book courier and delivery services with third-party suppliers with whom you have pre-existing accounts;

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

**"Subscription Fee"**: the recurring fee paid by you to us to receive access to the Solution, as set out in the Proposal;

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

**"Users"**: the individuals who you authorise to access the Solution under this Agreement;

- 1.2 references to "**Clauses**" are to clauses of these Terms and Conditions;
- 1.3 the headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement;
- 1.4 a "**person**" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.5 a reference to a Party includes its personal representatives, successors or permitted assigns;

- 1.6 words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include the other gender and the neutral and references to persons shall include an individual, company, corporation, firm, partnership, trust, association, government or local authority department or other authority or body (whether corporate or unincorporated);
- 1.7 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.8 any phrase introduced by the terms **"including"**, **"include"**, **"in particular"** or any similar expression, shall be construed as illustrative, shall not limit the sense of the words preceding or following those terms, and shall be deemed to be followed by the words "without limitation" unless the context requires otherwise; and
- 1.9 a reference to **"writing"** or **"written"** includes in electronic form and similar means of communication (except under Clause 12).

## 2. EFFECT

- 2.1 This Agreement shall apply to all use of an Account, the Solution and any Booking. When you register for an Account (and each time any User subsequently accesses your Account) this shall constitute your unqualified acceptance of these Terms and Conditions.
- 2.2 Save as expressly provided in this Agreement, this Agreement (and any document referred to in it) shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the Parties and in any way relating to the subject matter of this Agreement, 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. You acknowledge that you have not accepted these Terms and Conditions based on any representation that is not expressly incorporated into these Terms and Conditions.
- 2.3 Subject to any Booking (which shall be subject to the Provider Terms and this Agreement), 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.
- 2.4 You acknowledge that the Provider Terms apply to any Booking that you place using the Solution, in addition to this Agreement.

## 3. REGISTRATION FOR AN ACCOUNT

- 3.1 In order to submit a Booking through the Solution, you must first have registered for an Account.
- 3.2 If we have allocated to you an Account, you will be able to access information and functionality for use of the Solution.
- 3.3 In order for us to allocate to you access to the Solution and an Account, you must provide such information as we may require from time to time.
- 3.4 Once we have allocated access to the Solution to you, we will allocate to you a username and password to access your Account. You must keep the password confidential and immediately inform us if any unauthorised third party becomes aware of that password or if there is any unauthorised use of the Solution or any breach of security known to you; in such a case, you must request a new password from us. You agree that any person to whom your username or password is disclosed is authorised to act as your agent for the purposes of using the Solution. You are entirely responsible if you do not maintain the confidentiality of your password.
- 3.5 We require you to complete a Provider Information Form for each Provider with which you wish to place Bookings using the Solution. You will only be able to place Bookings with the Providers that are the subject of a Provider Information Form submitted to us from time to time.
- 3.6 You must ensure that the information provided by you in each Provider Information Form is correct, accurate and up to date.

- 3.7 You warrant that you are the owner of the Provider Account documented within the Provider Information Form and that you have all necessary rights, permissions and consents to access the Provider Account and authorise us to do so on your behalf using the Solution.
- 3.8 You authorise us to contact the Provider on your behalf.

## 4. OUR OBLIGATIONS

- 4.1 We shall provide access to the Solution and warrant that:
- 4.1.1 we shall use our reasonable skill and care in providing the Service;
- 4.1.2 we have all necessary consents, rights and permission to enter into, and perform our obligations under, this Agreement; and
- 4.1.3 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.
- 4.2 In relation to the Solution:
- 4.2.1 We hereby grant to you a non-exclusive, non-transferable licence to allow Users to access the Solution solely for your business purposes;
- 4.2.2 The rights provided under this Agreement are granted to you only, and shall not be considered granted to any subsidiary or holding company of you; and
- 4.2.3 You shall not:
- (a) attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Solution except to the extent expressly set out in this Agreement or as may be required by any applicable law;
- (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Solution, except as may be required by any applicable law; or
- (c) access all or any part of the Solution in order to build a product or service which competes with the Solution and/or the Booking Services.
- 4.3 We shall use our reasonable endeavours to perform our obligations under this Agreement within any timescales set out in this Agreement. Except as specifically stipulated in this Agreement, we shall not be responsible for providing or achieving any particular results or outcomes or within a particular time.
- 4.4 We do not warrant that the Service will be uninterrupted, error-free or secure from unauthorised access, or that it will meet your individual requirements. Whilst we use our reasonable endeavours to make the Service available, we shall not have any Liability (subject to Clause 10.2) if for any reason the Service is unavailable for any time or for any period. We make no warranty that your access to the Service will be uninterrupted, timely or error-free.
- 4.5 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 Service.
- 4.6 We may, at our absolute discretion, from time to time either host the Solution 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 Users or reasonably restrict Users' rights due to the requirements of a third-party supplier.
- 4.7 Except as expressly stipulated in this Agreement:
- 4.7.1 we shall not, at any point or within a particular time, be responsible for providing or achieving any particular results or outcomes; and
- 4.7.2 we 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 Service.

## 5. YOUR OBLIGATIONS

- 5.1 In order to place a Booking through the Solution, register an Account with us and provide such information as we may require from time to time. You must ensure that all information you provide to us is complete and accurate, including:
- 5.1.1 the number of parcels being sent within a Consignment;
  - 5.1.2 size and weight of each parcel;
  - 5.1.3 details of what each parcel contains;
  - 5.1.4 details of each parcels value;
  - 5.1.5 the relevant address for pick-up and delivery, as required;
  - 5.1.6 telephone numbers, as required; and
  - 5.1.7 any other details as may be required by each Provider.
- 5.2 You must:
- 5.2.1 report any faults or suspected faults with or in the Solution to us immediately upon discovery;
  - 5.2.2 report to us any abuse of the Internet (including spam, hacking and phishing) that you consider to have taken place through the use of the Solution by any person, and you must include in such report as much information as you are able to provide to us relating to the type of abuse that you have witnessed;
  - 5.2.3 ensure that you fully co-operate with, and make yourself available at all reasonable times for discussion and meetings with, us, including in order to enable us to carry out fully, accurately and promptly our obligations under this Agreement;
  - 5.2.4 not submit to us anything which in any respect may infringe the Intellectual Property Rights or privacy or other rights of us or any third party;
  - 5.2.5 comply with our reasonable instructions and requests in respect of the Solution or any Booking;
  - 5.2.6 have all necessary rights, permissions and consents to enter into, and perform your obligations under, this Agreement;
  - 5.2.7 comply with all applicable laws, statutes, regulations and by-laws in relation to the exercise of your rights and performance of your obligations under this Agreement; and
  - 5.2.8 ensure that the terms of the Booking, and any specification or instructions you provide to us for the Booking, are complete and accurate; promptly provide us with such information, data and assistance that will enable us to carry out fully, accurately and promptly our obligations under this Agreement.
- 5.3 You must not in any way use the Solution, or submit to us or the Solution, anything which in any respect:
- 5.3.1 is in breach of any law, statute, regulation or byelaw of any applicable jurisdiction;
  - 5.3.2 is fraudulent, criminal or unlawful;
  - 5.3.3 is inaccurate or out-of-date;
  - 5.3.4 is obscene, indecent, vulgar, discriminatory, offensive, threatening, defamatory or untrue;
  - 5.3.5 is in contravention of any applicable law, nor allow or assist any third party in doing so;
  - 5.3.6 impersonates any other person or body or misrepresents a relationship with any person or body;
  - 5.3.7 may infringe or breach the copy or Intellectual Property Rights of any third party;
  - 5.3.8 may be contrary to our interests;
  - 5.3.9 is contrary to any specific rule or requirement that we may stipulate for the Services; or
- 5.3.10 involves your use, delivery or transmission of any viruses, unsolicited communications, Trojan horses, trap doors, cancelbots, back doors, worms, easter eggs, time bombs or computer programming routines that are intended to damage, interfere with, surreptitiously intercept or expropriate any data, personal information or system.
- 5.4 You must not use any automated means to access the Solution or collect any information from it unless you have requested the option to access the Solution through an API on registration of your Account and we have consented to this request.
- 5.5 If you access the Solution through an API, subject to your compliance with your obligations under this Agreement and more specifically Clause 5.6, you are hereby granted a non-transferable limited licence to:
- 5.5.1 access the Solution through your website or your computer system using the API Key that we shall make available to you;
  - 5.5.2 make the Service available to your customers through your website or your computer systems; and
  - 5.5.3 reproduce our trade marks, logos and any other intellectual property embedded in the Service or otherwise described in these Terms and Conditions;
- 5.6 If you access the Solution through an API you agree to:
- 5.6.1 not edit, adapt, amend or otherwise alter the Solution or Service;
  - 5.6.2 not share the API Key with any third-party;
  - 5.6.3 not present the Service in a way that seeks to replicate or pass off your own website or computer system as a resource belonging to or endorsed by us; and
  - 5.6.4 include the "Powered by SmartConsign" logo, that we will provide to you upon registration of your Account, on the same webpage or the relevant tool or function embedded in your computer system that enables access to the Service.
- 5.7 It is your responsibility to ensure that the Service is sufficient and suitable for your purposes and meets your individual requirements. It is your responsibility to ensure that your use of the Solution is in your best interests, and you bear sole responsibility and Liability (subject to Clause 10.2) for the consequences of your use of the Solution.
- 5.8 It is your responsibility to ensure that you provide us with the information required to enable us to properly make the Solution available, and to perform our obligations under this Agreement. We shall not be responsible or have any Liability (subject to Clause 10.2) for any failure to make the Solution available, provide the Service, or to perform our obligations under this Agreement, to the extent caused by your failure to properly ensure the provision of the relevant information to us.
- 5.9 Access to the Solution may be suspended or withdrawn to or from you or all Users temporarily or permanently at any time without notice. We may also impose restrictions on the length and manner of usage of any part of the Solution or access for any reason. If we impose restrictions on you, you must not attempt to use the Solution under any other name or user.
- 5.10 Whilst we endeavour to ensure that information and materials on or provided through the Solution (including information about Provider Services) are correct, 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 10.2) for any errors or omissions.
- 5.11 It is your responsibility to ensure that:
- 5.11.1 any decision or implementation made by you and any User as a result of any advice, recommendation or course of action proposed in the provision of the Service by us is made in your best interests; and

5.11.2 the process of making such decision or implementation by you and your employees, agents and other contractors is made in compliance with your relevant risk strategy;

and you bear absolute responsibility and Liability for the consequences of any such decision or implementation. You acknowledge that whilst we provide access to the Solution we do not advise as to what Provider Services are the most appropriate to your requirements.

5.12 You acknowledge that you are responsible for putting in place appropriate insurance in respect of any Provider Services, as appropriate.

5.13 Subject to Clause 10.2, we will not have any Liability for any failure by you to have the necessary and appropriate documents, and to take any necessary precautionary actions, for your receipt of any Provider Services or otherwise make any trip using any Provider Services.

## 6. PROVIDER SERVICES

6.1 When you inform us of your intention to submit a Booking, you understand that the Booking is subject to the Provider Terms, including cancellation and amendment.

6.2 In submitting any Booking, you warrant that you have read and accepted the Provider Terms. We shall not have any Liability (subject to Clause 9.2) in respect of any Provider Terms, including any failure by you or the relevant Provider to comply with the relevant Provider Terms or to honour the terms of any Booking.

6.3 You will receive no representations or warranties in respect of the Provider Services except those contained in the relevant Provider Terms.

6.4 For the avoidance of doubt, we accept Liability in accordance with Clause 10 in respect of the Service only. Your access to, and the availability of, Provider Services, and the adequate performance of the Provider Services, is subject to the relevant Provider Terms.

6.5 You shall indemnify us against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by us arising out of or in connection with:

6.5.1 any breach, negligent performance or non-performance by you or the Provider of any Provider Terms or the Provider Services;

6.5.2 any action by you that may prevent the Provider from performance of the Provider Services; and/or

6.5.3 any claim made against us by any third party arising out of the Provider Services in respect of which you have submitted a Booking.

This indemnity shall apply whether or not we have been negligent or at fault.

6.6 You acknowledge that any provision of a booking confirmation by us is not a guarantee of the availability for the Provider Services in question.

6.7 You acknowledge that we have no operational control over Provider Services, including cancellations, which may occur at short notice. It is the relevant Provider's responsibility to advise us of any such changes, and we shall pass on such information to you promptly should we receive it, but we shall have no Liability (subject to Clause 10.2) for the actions or omissions of any Provider, or in respect of the performance, negligent performance, or failure in performance, of the Provider Services.

6.8 You agree that any User accessing the Service will be considered as having appropriate authorisation to use the Service and submit Bookings.

## 7. FEES

7.1 In consideration for obtaining the Service we provide pursuant to this Agreement, you must pay to us the relevant Fees.

7.2 You must pay the Fees to us at such times, in such instalments and on such terms as stipulated in the Proposal.

7.3 Unless otherwise set out in the Proposal, all sums due under this Agreement are exclusive of VAT or other sales, import or export duties or taxes (if applicable) which shall be payable in addition at the same time as payment of any sums due.

7.4 You must pay us by the payment method stipulated in the Proposal. No payment shall be considered paid until we have received it in cleared funds in full.

7.5 Payment must be in the currency in force in England from time to time or such other currency as we may stipulate from time to time for the Fees.

7.6 You must pay all amounts due under this Agreement in full without any set-off, counterclaim, deduction or withholding except as required by law. We may, without limiting our other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.

7.7 If you are late in paying any part of any monies due to us under this Agreement and such payment remains outstanding for seven days following us providing notice to you of such outstanding payment, we may (without prejudice to any other right or remedy available to us whether under this Agreement or by any statute, regulation or bye-law) do any or all of the following:

7.7.1 charge interest and other costs on the overdue amount due but unpaid at the annual rate of interest set under Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 from time to time 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;

7.7.2 recover our costs and expenses and charges (including legal and debt collection fees and costs) in collecting the late payment; and/or

7.7.3 suspend access to your Account until payment in full has been made.

## 8. DATA PROTECTION

8.1 You shall own all right, title and interest in and to all of the Customer Data and are exclusively responsible for the legality, reliability, integrity, accuracy and quality of the Customer Data.

8.2 The Parties acknowledge that, for the purposes of Data Protection Laws, you are the Controller and we are the Processor of any Personal Data. The scope, nature and purpose of Processing is as set out in the Data Sharing Summary.

8.3 Each Party confirms that it holds, and during the term of this Agreement, 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 Clause 8.

8.4 Each Party confirms that, in the performance of this Agreement, it will comply with the Data Protection Laws.

8.5 We will:

8.5.1 process Personal 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 the you of that legal requirement before Processing, unless that law prohibits us from informing you;

8.5.2 ensure that persons authorised to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

8.5.3 take all measures required pursuant to Article 32 of the GDPR in respect of security of Processing;

8.5.4 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;
- 8.5.5 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;
- 8.5.6 at your option, delete (to the extent practicable) or return all the Personal 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 the ongoing storage of the Personal Data;
- 8.5.7 make available to you all information necessary to demonstrate compliance with this Clause 8.5 and allow for and contribute to audits, including inspections, conducted by you or another auditor mandated by the you; and
- 8.5.8 inform you immediately if, in our opinion, an instruction from you infringes (or, if acted upon, might cause the infringement of) Data Protection Laws. Subject to Clause 10.2 we shall not have any Liability in respect of any instruction from you that breaches (or causes a breach of) Data Protection Laws to the extent that we could not reasonably have been aware, or could not reasonably be expected to have been aware, that such instruction would breach (or cause a breach of) Data Protection Laws.
- 8.6 In the event that we engage any new subcontractor for the purposes of Processing during the term of this Agreement, we will inform you at least 30 days in advance of the engagement commencing, together with relevant information relating to that subcontractor and its operations. You may object to that engagement by contacting us, and, as your sole and exclusive remedy for such engagement, terminate this Agreement in accordance with Clause 12.5.
- 8.7 Each Party will notify the other Party as soon as is reasonably practicable if it becomes aware of a Personal Data Breach relating to either Party's obligations under this Agreement.
- 8.8 You shall undertake appropriate data protection impact assessments to ensure that Processing of Personal 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.
- 8.9 It is your responsibility to ensure that Personal Data is dealt with in a way that is compliant with Article 5(1) of the GDPR.
- 8.10 It is your responsibility to ensure that:
- 8.10.1 you are able to justify the Processing of Personal Data in accordance with Article 6(1) of the GDPR (including where applicable, informing Data Subjects of the Providers whom their Personal Data will be shared with and 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;
- 8.10.2 where Personal Data falls within the Special Categories of Personal Data, Article 9(2) of the GDPR applies to that Personal Data before Processing takes place;
- 8.10.3 where Article 9(2) of the GDPR does not apply to any Personal Data falling within the Special Categories of Personal Data, no such data will be sent to us; and
- 8.10.4 you have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to us for the duration and purposes of this Agreement.
- 8.11 In the event that we:
- 8.11.1 comply with your instructions in respect of Processing, we shall not have any Liability (subject to Clause 10.2) for any damage caused by Processing that Personal Data, or for any consequences in the event that such Processing otherwise infringes Data Protection Laws, to the extent that such

damage or consequences result from compliance with such instructions; and/or

- 8.11.2 refuse to comply with your instructions in respect of Processing due to concerns that compliance will cause a breach of Data Protection Laws, we shall not have any Liability (subject to Clause 10.2) for any failure to follow such instructions.
- 8.12 Each Party agrees to indemnify, and keep indemnified and defend at its own expense, the other Party, against all costs, claims, damages or expenses incurred by the other Party or for which the other Party may become liable, due to any failure by the first Party or its employees or agents to comply with this Clause 8.

## 9. CONFIDENTIALITY

- 9.1 Each Party undertakes that it shall not, at any time, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other Party, except that each Party may disclose such information:
- 9.1.1 to its employees, officers, representatives, suppliers (including Providers) or advisers who need to know such information for the purposes of carrying out that Party's obligations under this Agreement. Each Party shall procure that its employees, officers, representatives, suppliers (including Providers) or advisers to whom it discloses the other Party's confidential information comply with this Clause 7.1; and
- 9.1.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 9.2 Neither Party shall use the other Party's Confidential Information for any purpose other than to perform its obligations under this Agreement.
- 9.3 The provisions of this Clause 7.1 shall continue to apply after termination or expiry of this Agreement.

## 10. LIMITATION OF LIABILITY

- 10.1 This Clause 10 prevails over all of this Agreement and sets forth our entire Liability, and your sole and exclusive remedies, in respect of:
- 10.1.1 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
- 10.1.2 otherwise in relation to this Agreement or entering into this Agreement.
- 10.2 Neither Party excludes or limits its Liability for:
- 10.2.1 its fraud; or
- 10.2.2 death or personal injury caused by its Breach of Duty; or
- 10.2.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982; or
- 10.2.4 any other Liability which cannot be excluded or limited by applicable law.
- 10.3 Subject to Clause 10.2, we do not accept and hereby exclude any Liability for Breach of Duty other than any Liability arising pursuant to the terms of this Agreement.
- 10.4 Subject to Clause 10.2, we shall not have any Liability in respect of any:
- 10.4.1 indirect or consequential losses, damages, costs or expenses;
- 10.4.2 loss of actual or anticipated profits;
- 10.4.3 loss of contracts;
- 10.4.4 loss of use of money;
- 10.4.5 loss of anticipated savings;
- 10.4.6 loss of revenue;
- 10.4.7 loss of goodwill;
- 10.4.8 loss of reputation;
- 10.4.9 loss of business;

- 10.4.10 ex gratia payments;
  - 10.4.11 loss of operation time;
  - 10.4.12 loss of opportunity;
  - 10.4.13 loss caused by the diminution in value of any asset; or
  - 10.4.14 loss of, damage to, or corruption of, data;
- whether or not such losses were reasonably foreseeable or we or our agents or contractors had been advised of the possibility of such losses being incurred. For the avoidance of doubt, Clauses 10.4.2 to 10.4.14 (inclusive) of this Clause 10.4 apply whether such losses are direct, indirect, consequential or otherwise.

- 10.5 Subject to Clause 10.2, 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% of all amounts paid and total other sums payable, in aggregate, by you to us under this Agreement in the one month prior to the date on which the claim first arose.
- 10.6 The limitation of Liability under Clause 10.5 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.
- 10.7 You acknowledge and accept that we only provide the Service to you on the express condition that we will not be responsible for, nor shall we have any Liability (subject to Clause 10.2) directly or indirectly for any act or omission of you, or your employees, agents or subcontractors, or any third party.
- 10.8 Subject to Clause 10.2,, we shall not have any Liability for any failure or delay by any Provider to provide or perform any Provider Services, nor for any other act or omission of any Provider.

#### **11. INTELLECTUAL PROPERTY RIGHTS**

You acknowledge that we own all the Intellectual Property rights in the Solution, the Account and the Service, and any rights arising out of any works undertaken in connection with them.

#### **12. TERMINATION**

- 12.1 This Agreement will continue in force until we or you close your Account.
- 12.2 We may terminate this Agreement with immediate effect at any time by giving notice to you, except where you are in breach of this Agreement, in which instance we may terminate this Agreement at any time without notice.
- 12.3 In the event that this Agreement terminated:
  - 12.3.1 you will cease to have access to the Service, your Account and the Solution; and
  - 12.3.2 the accrued rights, remedies, obligations and liabilities of us and you as at cancellation or termination shall not be affected, including the right to claim damages for any breach of this Agreement which existed at or before the date of cancellation or termination.
- 12.4 Termination of the Agreement shall not affect the coming into force, or continuance in force, of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.
- 12.5 You may terminate this Agreement upon 30 days written notice to us of your objection to the engagement of any subcontractor for purposes of Processing Personal Data in accordance with Clause 8.6.

#### **13. NOTICES**

- 13.1 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 (if it is a company) or its principal place of business (in any other case) 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 or commercial courier.

- 13.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 13.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 13.3 The provisions of this Clause 12 shall not apply to the service of any proceedings or other documents in any legal action.

#### **14. ASSIGNMENT**

You must 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 (such consent not to be unreasonably withheld or delayed).

#### **15. SEVERANCE**

- 15.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 15.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

#### **16. WAIVER**

- 16.1 A waiver of any right or remedy under this Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 16.2 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law

#### **17. THIRD PARTY RIGHTS**

A person who is not a Party shall not have any rights under or in connection with this Agreement.

#### **18. NO PARTNERSHIP**

Nothing in this Agreement shall constitute a partnership or employment or agency relationship between the Parties.

#### **19. GOVERNING LAW AND JURISDICTION**

- 19.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.
- 19.2 The Parties 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.