

1. DEFINITIONS

In this Agreement the following expressions have the meanings set opposite unless the context requires otherwise:

'Customer'	means the user of the Services
'Customer Personnel'	means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement
'Data Protection Impact Assessment,	Means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data
'Data Protection Legislation'	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy
Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer	take the meaning given in the GDPR
Data Loss Event	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach
Data Subject Access Request	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data
'DPA2018'	Data Protection Act 2018
'GDPR'	means the General Data Protection Regulation (Regulation (EU) 2016/679)
'Law'	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply
LED	Law Enforcement Directive (Directive (EU) 2016/680)

Protective Measures	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it
Sub-processor	any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement
‘Supplier’	means Idox Software Limited
‘Services’	means the Services agreed between The Supplier and the Customer to which these terms and conditions apply
‘Software’	shall mean any software owned by or licensed to the Supplier and supplied or made available to the Customer for the provision of the Services

2. USE OF THE SERVICES

- 2.1 The Services are owned and operated by the Supplier and are provided to the Customer for use by the Customer.
- 2.2 The Supplier on behalf of itself and any third-party licensor(s) of the Software retains all rights and title to the Software and the Services and, except as set out below, no Intellectual Property Rights or goodwill therein are transferred to the Customer.
- 2.3 In relation to the Service and the Software:
 - 2.3.1 the Customer is granted a non-exclusive, non-transferable right to use the Services and the Software;
 - 2.3.2 the Customer agrees not to copy or transfer the Services or Software or reverse assemble, decompile or otherwise attempt to derive source code from the Services or Software; and
 - 2.3.3 the Customer agrees to comply with all governmental or other regulations relating to the use of the Services or Software.
- 2.4 The Customer and its Business Partners must not remove or alter copyright and other proprietary notices contained in the Services or Software.

3. CONFIDENTIALITY

- 3.1 Each party agrees that it will not without the prior written agreement of the other party permit the duplication, use or disclosure of any Confidential Information to any third party unless at the time of disclosure such information is within the public domain.
- 3.2 "Confidential Information" shall mean (without limitation) any information whether oral, written or on electronic or optical media relating to this Agreement (although not its existence), the business and affairs of the parties and their respective clients, the Software and other materials delivered by the Supplier to the Customer pursuant hereto and technical and commercial data, customer account details, marketing and business plans, client lists, prices and pricing information, commercial agreements between the parties and between either party and a third party, information on communications, hardware and programming interfaces, protocols and integration, data, drawings, diagrams, software programs, trade secrets, know-how, algorithms, software architectures, designs and documentation (including in particular screen

designs), all proprietary information and other intellectual property or rights thereto belonging to either party or held by either party under a duty of care to a third party to treat such information as confidential and any other information specifically identified by either party as confidential.

- 3.3 Notwithstanding the foregoing, the receiving party shall be entitled to make any disclosure required by law or other regulatory authority.
- 3.4 In the event of termination of this Agreement the obligations of both parties under this clause shall continue as if the Agreement had not been terminated.

4. LIMITATION OF LIABILITY

- 4.1 Each party will indemnify the other against any claim for or in respect of death or personal injury of any person if and to the extent that it is caused by the negligence of such party or any employee of such party.
- 4.2 The Supplier will be liable for damage to the Customer's premises proven to have been caused by its negligence up to a maximum of £1,000,000 (one million pounds).
- 4.3 Subject always to Clauses 4.1 and 4.2, in the event that the Supplier fails to comply with its obligations of whatever nature arising under an Agreement, its liability for loss or damage in relation to loss or damage caused by the Services (whether in contract, tort (including negligence), restitution or otherwise) shall not exceed in the aggregate £100,000.
- 4.4 The Supplier shall not be liable to the Customer for any representation (unless fraudulent), implied warranty, condition or other term, any duty at common law, for any special, indirect or consequential loss including but not limited to loss of business, loss of contracts, loss of anticipated savings or revenue, or goodwill, or loss of or damage to or corruption of data or software.
- 4.5 The parties agree that it is reasonable that the Supplier shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any instructions given to the Supplier by the Customer which are incomplete, incorrect, inaccurate, illegible, or arising from their late arrival or non-arrival, or any other fault of the Customer. The parties also agree that it is fair and reasonable for risk to be allocated and that the Supplier's liability be limited in the manner set out in this Clause 4.
- 4.6 Each party acknowledges that any breach of its obligations with respect to the proprietary rights of the other party or such party's licensors may cause such other party irreparable injury for which there may be inadequate remedies at law and that such other party and its licensors will be entitled to equitable relief, in addition to all other remedies available to it.

5. DATA PROTECTION

- 5.1 Each party shall for the duration of the provision of the Services by the Supplier to the Customer comply with the provisions of the Data Protection Legislation and shall not do or permit anything to be done which might cause or otherwise result in breach of the same.
- 5.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is determined by the Customer and may not be determined by the Supplier.
- 5.3 The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 5.4 The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
 - a) a systematic description of the envisaged processing operations and the purpose of the processing;

- b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

5.5 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

(a) process that Personal Data only in accordance with the Customer's written instructions, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

6. (c) ensure that:

(i) the Supplier Personnel do not process Personal Data except in accordance with this Agreement and the Customer's written instructions;

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:

- (A) are aware of and comply with the Supplier's duties under this clause;
- (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
- (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and

(iv) the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

(e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.

6.1 Subject to clause 1.6, the Supplier shall notify the Customer immediately if it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

(e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

or

(f) becomes aware of a Data Loss Event.

- 6.2 The Supplier's obligation to notify under clause 1.5 shall include the provision of further information to the Customer in phases, as details become available.
- 6.3 Taking into account the nature of the processing, the Supplier shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- (a) the Customer with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Customer following any Data Loss Event;
 - (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 6.4 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- (a) the Customer determines that the processing is not occasional;
 - (b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 6.5 The Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 6.6 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.
- 6.7 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
- (a) notify the Customer in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Customer;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 6 such that they apply to the Sub-processor; and
 - (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 6.8 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.

- 6.9 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 6.10 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Customer acknowledges and accepts that any and all intellectual property rights which subsist in or arise in connection with the Services belong to the Supplier and/or its third party licensors.

8. APPLICABLE LAW

- 8.1 Unless otherwise agreed in writing between the parties, these Terms and Conditions shall be subject to and construed and interpreted in accordance with the laws of England and Wales and shall be subject to the non-exclusive jurisdiction of the courts of England and Wales.