

# Cyber Terms of Service

Thomas Murray Cyber Limited

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# Cyber Terms of Service

## 1 Definitions and Interpretation

1.1 The following definitions and rules of interpretation apply in these Terms of Service:

- 1.1.1 “**Affiliate**” means in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time;
- 1.1.2 “**Agreement**” has the meaning given in our Engagement Letter;
- 1.1.3 “**Applicable Laws**” means all applicable laws, statutes, regulations and codes from time to time in force;
- 1.1.4 “**Applicable Data Protection Laws**” means:
  - (a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data, or
  - (b) to the extent the EU GDPR applies, the law of the law of the European Union or any member state of the European Union to which TM is subject, which relates to the protection of personal data;
- 1.1.5 “**Business Day**” a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
- 1.1.6 “**Business Hours**” the period from 9.00 am to 5.30 pm Greenwich Mean Time or British Summer Time (as applicable) on any Business Day;
- 1.1.7 “**Change of Control**” shall be defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly;
- 1.1.8 “**Change Request**” has the meaning given in clause 6.1;
- 1.1.9 “**Confidential Information**” means any and all information that is proprietary and/or confidential in nature and is clearly labelled as such or would, by its nature, be considered to be confidential, in whatever form or medium, disclosed by one party to the other party (including but not limited to any TM Materials);
- 1.1.10 “**Consultancy Services**” means the services, including the provision of the Deliverables, supplied by TM (or any TM’s Affiliate or sub- contractor) to the Customer as set out in a SOW, at the rates specified therein;
- 1.1.11 “**Contract**” has the meaning given in clause 2.3;
- 1.1.12 “**Contract Year**” means each consecutive period of 12 months commencing from the Effective Date;
- 1.1.13 “**CPI**” has the meaning given in clause 7.8;
- 1.1.14 “**Currency Fluctuation**” has the meaning given in clause 7.9
- 1.1.15 “**Customer**” means the entity identified as the “*Customer*” in TM’s Engagement Letter;
- 1.1.16 “**Customer Data**” means all data, information, and other materials in any form whether or not Confidential Information:
  - (a) provided by or on behalf of the Customer; and/or
  - (b) submitted and/or inputted to the Platform by the Customer and/or its Users or TM on the Customer’s or its users behalf (as the case may be); and
  - (c) which may be accessed, generated, collected, restored, stored or transmitted by TM (or any TM’s Affiliate or sub-contractor) in the course of the performance of the relevant Services;

- 1.1.17 “**Customer Materials**” have the meaning given in clause 5.1.4;
- 1.1.18 “**Default Notice**” has the meaning given in clause 7.4.1;
- 1.1.19 “**Data Processing Agreement**” means the data processing agreement contained in Appendix 2 of the Cyber Terms of Service combined with Annex A appended to each SoW;
- 1.1.20 “**Deliverables**” means any output of the Services to be provided by TM to the Customer as specified in each SoW and any other documents, products and materials provided by TM to the Customer in relation to the Services concerned;
- 1.1.21 “**Effective Date**” has the meaning given in TM’s Engagement Letter;
- 1.1.22 “**EU GDPR**” means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law;
- 1.1.19 “**EULA**” means any end user licence agreement for the Third Party Terms. If and when TM provide Third-Party Software, TM will supply the relevant Third Party Terms to the Customer.
- 1.1.23 “**Fees**” means the sums paid or payable by the Customer to TM in consideration for the provision of the Services and/or Deliverables, as specified in the relevant SoW;
- 1.1.24 “**Initial Term**” has the meaning given in TM’s Engagement Letter;
- 1.1.25 “**Intellectual Property Rights**” or “**IPR**” means:
  - (a) patents, any extensions of the exclusivity granted in connection with patents, petty patents, utility models, registered designs, applications for any of the foregoing (including, but not limited to, continuations, continuations-in-part and divisional applications), the right to apply for and be granted any of the foregoing, rights in inventions;
  - (b) copyrights, design rights, semiconductor topography rights, moral rights, publication rights, database rights;
  - (c) trade marks and service marks, applications for any of the foregoing, the right to apply for any of the foregoing, rights in trade names, business names, brand names, get-up, logos, domain names and URLs;
  - (d) rights in know-how, trade secrets and confidential information, data exclusivity rights; and
  - (e) all other forms of intellectual property right having equivalent or similar effect to any of the foregoing which may exist anywhere in the world;
- 1.1.26 “**Losses**” means liabilities, losses, demands, fines, damages, costs, claims, expenses and interest (including reasonable legal fees arising in connection with the same) and “**Loss**” shall be interpreted accordingly;
- 1.1.27 “**material breach**” means that such breach is: (a) more than trivial but need not be repudiatory; and (b) if not remedied (or if not capable of remedy), may or is likely to have, a serious impact on the benefit which the innocent party would otherwise derive from performance of the Agreement or a Contract in accordance with its terms;
- 1.1.28 “**Out of Scope Services**” means any services not included or exceeding the agreed and specified consultancy services and/or Deliverables in the relevant SoW;
- 1.1.29 “**Platform**” means TM’s online software solutions known as Service Modules (as defined in the TM EULA) owned and operated by TM as part of the Services, available at <https://login.thomasmurray.com>;
- 1.1.30 “**Platform Subscription**” means the subscription purchased by the Customer from time to time for use of the relevant Service Modules by its User(s) (as defined in the TM EULA);
- 1.1.31 “**Renewal Term**” has the meaning given in TM’s Engagement Letter;

- 1.1.32 “**SaaS**” means any software as a service subscription or license agreement to be entered into between the parties or their respective Affiliates in respect of delivery of any Third Party Software to the Customer.
  - 1.1.33 “**Services**” means the Consultancy Services, Platform and any other services specified in a SoW to be provided by TM to the Customer under and in connection with the relevant Contract (subject to conflict provisions in the Agreement unless expressly provided otherwise in the relevant SoW).
  - 1.1.34 “**Statement of Work**” or “**SoW**” means each document described as a statement of work together with its annexes, appendices and/or schedules (if any and as applicable), separately executed by the parties that references and incorporates the Agreement, and specifies: (a) the Services and/or Deliverables to be provided by TM to the Customer from time to time under that SoW; (b) the relevant provisions under which any such Services and/or Deliverables will be provided in addition to the provisions of the Agreement (subject to conflict provisions of the Agreement, unless expressly provided otherwise in the relevant SoW); (c) associated Fees; (d) including any Change Request agreed between the parties from time to time in accordance with clause 6 (Change Procedure) in relation to the relevant SOW;
  - 1.1.35 “**SoW Commencement Date**” means the date described in a SOW as the commencement date, or where no such date has been provided, means the date the SoW commences following execution by both parties’ authorised representatives;
  - 1.1.36 “**Term**” has the meaning given in clause 12.2;
  - 1.1.37 “**Terms**” means these Cyber Terms of Service;
  - 1.1.38 “**Third Party Costs**” means all fees, rates, costs, disbursements and other professions fees and expenses, including any legal fees, and any increases thereto, payable to third parties by TM under and in connection with the relevant SoW.
  - 1.1.39 “**Third Party IPR**” means any IPR belonging to any third party which is licensed to the Customer under Third Party Terms, as applicable;
  - 1.1.40 “**Third Party Software**” means third party owned applications whether or not supplied by TM which TM or its Affiliates are authorised to resell (as the case may be);
  - 1.1.41 “**Third Party Terms**” means terms and conditions for use of any Third Party Software, Third Party IPR or third party supplied SaaS including any EULA;
  - 1.1.42 “**TM IPR**” has the meaning given in clause 8.1;
  - 1.1.43 “**TM EULA**” means the terms and conditions that govern access and use of the Platform;
  - 1.1.44 “**TM Materials**” means the data, reports, Platform, other software solutions (including software as a service), documents and any other materials, information, Deliverables or items owned by or licensed to TM that are provided to the Customer by, or on behalf of, TM in connection with the relevant Contract and any and all modifications, adaptations, add-ons, updates and/or enhancements to such data, reports, software, documents and materials, whether or not made by or at the suggestion of the Customer or its employees, User(s) and sub-contractors (excluding Customer Materials); and
  - 1.1.45 “**UK GDPR**” has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
- 1.2 In these Terms:
- 1.2.1 unless the context otherwise requires, a reference to these Terms includes its schedules, appendices and annexes (if any);

- 1.2.2 unless the context otherwise requires, a reference to the Agreement includes our Engagement Letter, Data Processing Agreement, these Terms and other appendices or annexes to these Terms or a SoW which sets out the Third Party Terms (if any);
- 1.2.3 a reference to a party shall be construed as TM or the Customer and parties shall be construed as TM and the Customer taken together;
- 1.2.4 a reference to a gender includes each other gender;
- 1.2.5 words in the singular include the plural and vice versa;
- 1.2.6 any words that follow ‘**include**’, ‘**includes**’, ‘**including**’, ‘**in particular**’ or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.7 any clause, schedule or other headings in these Terms are included for convenience only and shall have no effect on the interpretation of these Terms; and
- 1.2.8 a reference to legislation is a reference to that legislation as in force as at the date of these Terms except to the extent that any such amendment, extension or re-enactment would increase either party’s liability under these Terms.

## 2 Statement of Work (SoW) and Structure

### SoW

- 2.1 Subject to the remaining provisions of this clause 2 (SoW and Structure), the Agreement sets out the general terms and conditions for the supply of the Services and/or Deliverables to the Customer by TM (and/or its Affiliates and sub-contractors) as described in a Statement of Work.
- 2.2 The parties will negotiate and document each SoW. To enter into force or be legally binding, the SoW has to be signed by the parties’ authorised representatives.

### Structure

- 2.3 When a SoW is executed by the parties’ authorised representatives in accordance with clause 2.2 above, a separate legal contract is formed between TM and the Customer (“**Contract**”) and TM will be obliged to provide, and the Customer will be obliged to purchase, the Services and/or Deliverables described in the SoW subject to the terms of the relevant Contract.
- 2.4 Each Contract shall be comprised of: (a) these Terms; (b) the relevant SoW; and (c) the provisions of TM’s Engagement Letter.
- 2.5 Each SoW shall be drafted in the English language unless otherwise agreed between the parties in the relevant SoW.
- 2.6 **Conflict.** In the event of any conflict within the Contract between the provisions of TM’s Engagement Letter, the SoW, the provisions of these Terms and any of its appendices, the following descending order of priority applies:
  - 2.6.1 the provisions of the SoW in respect of the Services and/or Deliverables provided under that SoW including any Change Request agreed between the parties in relation to that SoW;
  - 2.6.2 TM’s Engagement Letter;
  - 2.6.3 Appendix 2 to these Terms (Data Processing Agreement) and Annex A to the relevant SoW setting out details of data processing;
  - 2.6.4 these Terms, including any amendments to these Terms agreed in accordance with clause 6 (Change Procedure); and finally
  - 2.6.5 other appendices and annexes (to these Terms or the relevant SoW), which provide or set out the relevant Third Party Terms (if any).

- 2.7 For the avoidance of any doubt, nothing contained in any document issued by the Customer will in any way modify or add terms and conditions to a Contract, and any such modified or additional terms and conditions are hereby expressly excluded from any Contract.

### **3 Warranties**

- 3.1 On entering into the Agreement and a Contract, each party warrants and represents to the other that:
- 3.1.1 it has full capacity and authority to enter into and to perform the Agreement and the relevant Contract; and
  - 3.1.2 the Agreement and each SoW have been executed by its duly authorised representative.
- 3.2 Except as expressly stated in these Terms or the provisions of the relevant SoW, all warranties, conditions, representations and terms (whether written or oral, express or implied by statute, common law, custom, trade usage, course of dealing or otherwise, including a to satisfactory quality, fitness for a particular purpose or use, accuracy, adequacy, completeness or timeliness) are hereby excluded to the fullest extent permitted by Applicable Laws.
- 3.3 The Customer warrants and represents to TM that it will comply with all Third Party Terms (if applicable), and it will indemnify, and hold harmless TM for all Losses incurred by TM as a result of breach by the Customer.

### **4 Services**

- 4.1 TM shall during the Term perform the Services:
- 4.1.1 using reasonable skill and care;
  - 4.1.2 substantially in accordance with the relevant SoW;
  - 4.1.3 ensuring that documentary Deliverables substantially meet the requirements specified in the SoW and are of reasonable quality (other than trivial, cosmetic or immaterial respects);
  - 4.1.4 exercising that degree of care, diligence and skill which would reasonably and ordinarily be expected from a skilled, professional and experienced person engaged in providing services the same or similar to the Services set out in the relevant SoW; and
  - 4.1.5 in accordance with all Applicable Laws that bind TM as a provider of the relevant Services.
- 4.2 TM shall use reasonable endeavours to ensure that all TM personnel and sub-contractors (or TM Affiliates and their respective personnel):
- 4.2.1 comply with all reasonable requirements of the Customer concerning professional conduct at the Customer's premises, including all health and safety and security requirements; and
  - 4.2.2 are appropriately qualified, trained, linguistically fluent and experienced to provide the Services agreed.
- 4.3 TM may engage sub-contractors (including TM Affiliates and their respective personnel) from time to time to perform any Services or provide Deliverables to its customers. The allocation of TM personnel and its sub-contractors (including TM Affiliates and their respective personnel) in the provision of the relevant Services or delivery of a Deliverable is entirely within TM's discretion.
- 4.4 TM reserves the right to replace any of its consultants or sub-contractors (including TM Affiliates and their respective personnel) engaged in the performance of the Services or delivery of Deliverables at any time and shall use reasonable endeavours to minimise the replacement of

- such consultant or sub-contractor (including TM Affiliates and their respective personnel) and any disruption caused by such replacement.
- 4.5 TM shall be liable for any breach of these Terms by its sub-contractors (including TM Affiliates and their respective personnel) as for its own acts and omissions.
- 4.6 TM primarily rely on information provided by the Customer about the Customer's business operations and requirements. Accordingly, the Customer is obliged to specify and quantify Deliverables to the best of their ability, and TM will provide to the Customer with the Services and/or Deliverables described and agreed in the relevant SoW.
- 4.7 The Customer acknowledges and agrees that there may be instances in which TM will be unable to perform the Services and/or deliver Deliverables without assistance from the Customer. Consequently, the Customer will provide to TM, in a timely manner, such resources (including access to the Customer's personnel) reasonably required by TM, to enable TM to perform the Services and/or deliver Deliverables concerned.
- 4.8 TM shall not be liable for any delay or failure in performance of its obligations under the Agreement or any Contract:
- 4.8.1 caused by the delay, act or omission of the Customer, its director, agents, sub-contractors, consultants and/or employees and without prejudice to any other right or remedy it may have, TM will be entitled to seek an equitable extension of time to perform its obligations. The parties will, acting reasonably, co-operate to agree any such extension which will be documented in accordance with clause 6 (Change Procedure); and/or
- 4.8.2 resulting from the Customer's request for any Out of Scope Services. Any such delays may result in additional Fees calculated in accordance with TM's then available rates, as per TM's standard rate card set out in the SoW.
- 4.9 TM warrants that, to the best of its knowledge, information and belief at the Effective Date or SoW Commencement Date (as applicable), the Services and Deliverables (if any) provided under the relevant Contract do not infringe the Intellectual Property Rights of any third party.
- 4.10 TM shall not be in breach of the warranty in clause 4.9 above if the infringement arises from:
- 4.10.1 the use of the Customer Materials in the development of, or the inclusion of the Customer Materials in any Deliverable;
- 4.10.2 any modification of the Deliverables or Services, other than by or on behalf of TM or its authorised agents;
- 4.10.3 the use of Third Party Software otherwise than in accordance with the Third Party Terms; and
- 4.10.4 compliance with the Customer's specifications or instructions.
- 4.11 In the event that any Third Party Terms form part of a relevant Contract, they shall be entered into by the Customer and the Customer undertakes to do so prior to receiving any Services under the relevant Contract. No warranty is given by TM in this regard and the Third Party Terms shall apply between the Customer and the provider of the Third Party Software, if applicable.



## 5 Customer Obligations

- 5.1 The Customer shall at all times and in all respects:
- 5.1.1 perform its obligations in accordance with the terms of the relevant Contract and in compliance with all Applicable Laws;
  - 5.1.2 pay the applicable Fees for the Services and/or Deliverables in accordance with clause 7 (Payment) unless otherwise agreed in the relevant SoW;
  - 5.1.3 co-operate with TM in all matters arising under the relevant Contract or otherwise relating to the performance of the Services and/or Deliverables (if any);
  - 5.1.4 provide the Customer Data (including Platform Customer Data (as defined in the TM EULA)), and all other information, documents, materials, data or other items necessary for the provision of the Services (together "**Customer Materials**"), to TM in a timely manner;
  - 5.1.5 inform TM in a timely manner of any matters (including any health, safety or security requirements) which may affect the provision of the Services; and
  - 5.1.6 obtain and maintain all necessary licences, permissions, consents and user rights required to make available Customer Materials and to enable TM to perform the Services and/or deliver Deliverables and otherwise comply with its obligations under the relevant Contract.
- 5.2 The Customer warrants that the Customer Materials and all other information, documents, materials, data or other items provided by the Customer pursuant to the Agreement and any Contract are complete and accurate and, to the best of its knowledge, information and belief, do not infringe the Intellectual Property Rights of any third party.

## 6 Change Procedure

- 6.1 If either party propose changes to the scope or execution of the Services and/or Deliverables pursuant to any relevant Contract ("**Change Request**"), the parties shall:
- 6.1.1 execute a Change Request; or
  - 6.1.2 execute a new SoW.
- 6.2 Any such Change Request or new SoW shall document:
- 6.2.1 any changes to the Services and/or additional Out of Scope Services;
  - 6.2.2 applicable Fees; and
  - 6.2.3 where applicable, timelines.
- 6.3 In order to come into effect, a Change Request or SoW has to be signed by the parties' authorised representatives.
- 6.4 Until such change is made in accordance with clause 6.2 and clause 6.3, the parties shall, unless otherwise agreed in writing, continue to perform the Contract in compliance with its terms prior to such change.



## 7 Payment

- 7.1 In consideration of the provision of the Services and Deliverables by TM, the Customer shall pay the Fees.
- 7.2 The Customer shall pay TM all Fees within fourteen (14) days of the invoice date, unless otherwise agreed in writing.
- 7.3 All expenses and costs, including any Third Party Costs, incurred by TM in the provisions of the Services and/or Deliverables will be reimbursed by the Customer in addition to the Fees. TM shall use commercially reasonable endeavours to obtain Customer's written approval for any expenses and costs (excluding any Third Party Costs).
- 7.4 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay TM any sum due (except for payment subject to a good faith dispute as referred to in clause 7.5 below) on the due date:
- 7.4.1 TM may give the Customer a written notice of default relating to such non-payment ("**Default Notice**"); and
  - 7.4.2 if the Customer fails to cure such default within fourteen (14) days of receipt of the Default Notice, TM may charge interest at a rate of 4% of the outstanding balance per month above Barclays Bank Plc the then current base rate (from the date that such payment was due to the date of payment); and/or
  - 7.4.3 TM may suspend performance of the Services (or any part thereof) and/or delivery of Deliverables until all payments are made by the Customer.
- 7.5 The Customer may dispute an invoice (or any amount thereof) in good faith by notifying TM within fifteen (15) days of the receipt of the invoice concerned which elements of the invoice are disputed and why, failing which the invoice shall be deemed as undisputed.
- 7.6 All amounts and Fees stated or referred to in a SoW are exclusive of all taxes, including any value added tax. Value added tax shall be added to TM's invoice(s) at the appropriate rate (if applicable).
- 7.7 The Customer shall make all payments without withholding or deducting any tax unless required by Applicable Laws. If any deduction or withholding for or on account of tax is required by Applicable Laws to be made by the Customer for any payment due under a SoW, then the Customer shall: (a) notify TM in advance in writing; and (b) increase the amount of such payment so that after the making of such deduction or withholding, the Customer ensures that the net amount received by TM is equal to the amount which TM would have received had no such deductions or withholding been made by the Customer. If the Customer does deduct such amounts, it shall pay such sums to the relevant taxation authority within the period for payment permitted by Applicable Laws and provide TM with evidence of payment to the relevant tax authority of the relevant amount.
- 7.8 TM reserves the right to increase the Fees applicable to any Services provided under the relevant Contract with effect from any Renewal Term, by the percentage increase equal to the Consumer Prices Index during the previous twelve (12) months published by the Office for National Statistics in England and Wales ("**CPI**") by giving written notice to the Customer of such increase.
- 7.9 If a currency is other than sterling is included and there is a change of more than 5% in the daily spot exchange rate of the currency agreed in the applicable SoW against sterling (published by the Bank of England) occurs during the term of any SoW associated with these Terms (a "Currency Fluctuation") then the Fees shall be adjusted such the sterling amount of any Currency Fluctuation when converting the currency agreed in the applicable SoW to sterling in relation to any payment due, shall be met equally between the parties.
- 7.10 TM shall use commercially reasonable endeavours to notify the Customer in writing of any relevant changes to the Third Party Costs.
- 7.11 In the event that TM increases any Fees by an amount greater than CPI (except for any Third Party Costs and other costs and expenses payable by the Customer in addition to the Fees), the

Customer may object to a proposed adjustment, in which case the parties shall use commercially reasonable endeavours to agree and determine the appropriate adjustment. Pending determination of a proposed adjustment to the Fees, the Fees then in force shall continue to apply. Once the parties determine the appropriate adjustment, the adjusted Fees shall be deemed to apply with effect from the beginning of the Renewal Term concerned. Within one (1) month of the appropriate adjustment being determined, the Customer shall pay TM any outstanding sums due in respect of the Consultancy Services provided since the beginning of the relevant Renewal Term together with any applicable VAT. If parties fail to agree and determine the appropriate adjustment within one (1) month from the beginning of the relevant Renewal Term, the Customer may terminate the Contract concerned by giving at least fifteen (15) days prior written notice to TM.

- 7.12 Updates and upgrades will be provided by any relevant Third Party Software provider in accordance with their EULA with the Customer (if applicable). Accordingly, it is Customer's responsibility to maintain the currency of any Third Party Software in accordance with the relevant EULA by deploying the latest recommended version made available by the relevant provider of Third Party Software.

## 8 Intellectual Property Rights

- 8.1 The Customer acknowledges and agrees that, except to the extent comprising Customer Materials, TM and/or its licensors own all Intellectual Property Rights in all TM Materials, and any other information, materials, items or outputs provided and/or made available as part of the Services (the "**TM IPR**").
- 8.2 TM hereby grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up (except for the Fees), non-exclusive, non - sub-licensable and non-transferable licence to use the TM IPR during the Term for the sole purpose of receiving the Services provided that, subject to clause 8.3 and clause 8.4, the Customer may continue to use the Deliverables specified in the relevant SoW after the Term on a perpetual basis for its own internal business (non-commercially exploitable) purposes.
- 8.3 The Customer is not permitted to extract the TM IPR from TM Materials, share the Deliverables with any third-party competitor of TM, or to re-purpose the Deliverables, in each case, without TM's prior written consent.
- 8.4 The Customer agrees that reports and information provided by TM as part of Deliverables under or in connection with these Terms, are strictly confidential and are intended solely for the private and exclusive use of the Customer within its business operations. Any other use of TM's reports and information (including for employment purposes, credit evaluation or insurance underwriting purposes) is strictly prohibited and Customer agrees that no such use will occur.
- 8.5 The Customer shall indemnify and defend TM, its directors, officers, agents, employees, representatives and/or TM Affiliates from and against any and all Losses suffered or incurred by TM, its directors, officers, agents, employees, representatives and/or TM Affiliates arising out of or in connection with the Customer's breach of clause 8.4. This indemnity shall apply whether or not the Customer has been negligent or at fault. Customer's liability under this indemnity is unlimited.
- 8.6 TM may freely incorporate feedback and/or suggested improvements to the TM IPR, the Services and/or the Deliverables given by the Customer, its employees, personnel, sub-contractors or other authorised representative.
- 8.7 The Customer acknowledges and agrees that TM or any Third Party Software provider may anonymise any technical data collected, processed and/or created as part of the Services under or in connection with these Terms, and collate and use such anonymised data for its business purposes.
- 8.8 Except as expressly stated in these Terms, the Customer shall have no right or interest in the TM IPR and all rights are reserved by TM.

- 8.9 The Customer and/or its licensors own all Intellectual Property Rights in and to all of the Customer Materials and shall have sole responsibility for the legality, non-infringement, reliability, integrity, accuracy and quality of the Customer Materials.
- 8.10 The Customer grants to TM (and its Affiliates and sub-contractors) a non-exclusive, non-transferrable, worldwide, royalty free, irrevocable right and license to use the Customer Materials to the extent necessary for TM (or TM's Affiliate and sub-contractors, as the case may be) to provide the Services and to deliver the Deliverables.
- 8.11 If, through the provision of the Services, the Customer (or any of its employees or representatives) come to own Intellectual Property Rights in the TM IPR by operation of Applicable Laws then the Customer shall (or shall procure that the employees and/or personnel and/or representatives in question shall) at TM's request take all steps necessary to assign such Intellectual Property Rights to TM and, to the extent permitted by Applicable Laws, waive all moral rights (and analogous rights) worldwide in connection with such Intellectual Property Rights.
- 8.12 Nothing in these Terms shall prevent TM from using any skills, techniques, methodologies or know-how acquired in connection with the Services and/or the Deliverables or otherwise in connection with any Contract provided always that such use does not constitute a breach of the non-disclosure obligations in clause 9 (Confidentiality).
- 8.13 IPR in any Third Party Software used in connection with the Services will remain the property of the owner of the Third Party Software and its licensors and use will be subject to the applicable Third Party Terms, including any and all rights that the Third Party Software provider may hold as to the IPR. Nothing in these Terms or any Contract is intended to convey or transfer ownership or the grant of any license or sublicense by one party to the other party of any rights in any IPR controlled by any party, including any third party.
- 8.14 The Customer shall (and shall procure that any of its employees, directors, representatives, agents and/or sub-contractors shall):
- 8.14.1 not create or attempt to, or aid or permit others to, create by reverse engineering, disassembly, decompilation, reverse engineering or otherwise, the internal structure, the source code, hardware design, or organisation of any Third Party Software, unless expressly permitted by Applicable Laws;
  - 8.14.2 not copy, modify, translate, or create derivative works of the software included in any Third Party Software, unless the relevant Third Party Software provider consents in writing, or separate the Third Party Software concerned into component parts for distribution or transfer to a third party; and
  - 8.14.3 comply with any and all Third Party Terms set out or provided in the relevant Contract.
- 8.15 Third Party Software providers may discontinue or modify their software and services, modify their software and services specifications, or replace their software and services with similar software and services, except that Third Party Software providers may not discontinue, modify, or replace software and services that are subject to an accepted and outstanding SoW, unless required by Applicable Laws or otherwise provided in the relevant Third Party Terms.

## 9 Confidentiality

- 9.1 The provisions of this clause 9 shall not apply to any Confidential Information that:
- 9.1.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its representatives in breach of this clause);
  - 9.1.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
  - 9.1.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
  - 9.1.4 the parties agree in writing is not confidential or may be disclosed, subject to any conditions agreed between the parties; or
  - 9.1.5 is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 9.2 Each party shall keep the other party's Confidential Information secret and confidential and shall not:
- 9.2.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with the relevant Contract; or
  - 9.2.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 9.
- 9.3 A party may disclose the other party's Confidential Information to those of its representatives and employees who need to know such Confidential Information solely for the provision of the Services, provided that:
- 9.3.1 it informs such representatives and employees of the confidential nature of the Confidential Information before disclosure; and
  - 9.3.2 at all times, it is responsible for such representatives' and employees' compliance with the confidentiality obligations set out in this clause.
- 9.4 **Mandatory disclosure.** A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 9.5 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this clause 9 are granted to the other party, or to be implied from any Contract.
- 9.6 TM may issue any public relations or advertising materials or make any public announcement regarding the Customer's use of the Services and/or Deliverables (including by using trading names, trademarks, and other representations related to the Customer's brand and noting the Customer as a referee) with the Customer's prior consent.
- 9.7 The provisions of this clause 9 shall continue to apply after termination or expiry of the Agreement and a relevant Contract.

## **10 Data Protection**

- 10.1 Each party shall comply with the Data Processing Agreement and Applicable Data Protection Laws with respect to the control and/or processing of personal data under and/or in connection with these Terms, Appendix 2 (Data Processing Agreement) to these Terms and a relevant Contract.

## **11 Liability**

- 11.1 Nothing in the Agreement or a Contract shall limit or exclude:
- 11.1.1 either party's liability to the other in respect of:
    - (a) death or personal injury caused by negligence;
    - (b) fraud or fraudulent misrepresentation, or
    - (c) any other losses which cannot be excluded or limited by Applicable Laws; and
  - 11.1.2 Customer's liability under any indemnity given in these Terms and the relevant Contract.
- 11.2 Except as expressly provided otherwise in clause 11.3, nothing shall limit or exclude:
- 11.2.1 the Customer's liability: (a) to pay the Fees; or (b) for any breach of the Data Processing Agreement; or
  - 11.2.2 either party's liability for a breach of clause 9 (Confidentiality).
- 11.3 Subject to clause 11.1 and clause 11.2, neither party shall be liable to the other (or any third party claiming under or through the other) under any and all Causes of Action (whether such causes of action arise in contract (including under any indemnity or warranty), in tort (including negligence or for breach of statutory duty) or otherwise) for Losses that comprise:
- 11.3.1 loss of profit or revenue (except for the Fees);
  - 11.3.2 loss of anticipated savings;
  - 11.3.3 loss of contract or business opportunity;
  - 11.3.4 loss, destruction or corruption of data (except as expressly provided otherwise in the relevant Contract);
  - 11.3.5 depletion of goodwill; or
  - 11.3.6 any special, indirect or consequential loss,
- in each case, whether arising directly or indirectly under or in connection with the Contract concerned and whether or not reasonably foreseeable, reasonably contemplatable, actually foreseen or actually contemplated by a party at the Effective Date or SoW Commencement Date (as applicable).
- 11.4 Subject to clauses 11.1, 11.2 and 11.3, each party's total aggregate liability to the other (and to any third party claiming under or through the other) under and/or in connection with the Agreement and the relevant Contract in each Contract Year and in respect of all Causes of Action arising in that Contract Year (as determined at the date when the liability giving rise to the Causes of Action arose) shall not exceed 100% of the total Fees paid by the Customer to TM under the Contract concerned in respect of the Contract Year in question.
- 11.5 Notwithstanding any other provision of the Agreement or any Contract, the Customer acknowledges that TM may supply Third Party Software as an authorised reseller only, and not as owner of the Third Party Software. All warranties and remedies applicable to Third Party Software are limited those given under Third Party Terms of license or user rights from the owner and TM does not give any further or additional warranty. Notwithstanding any other provision of the Agreement or any Contract, TM shall not be liable for any Losses arising out of or in

connection with the use of any Third Party Software which is procured by TM for and on behalf of the Customer.

11.6 The Customer acknowledges and agrees that:

- 11.6.1 if the Consultancy Services or any other Services agreed include the provision of computer forensics, the Customer acknowledges that digital/computer equipment, drives, data and media may be damaged, infected or corrupted prior to forensic analysis being performed hereunder, and TM does not assume responsibility or liability for such pre-existing damage or further problems resulting therefrom;
- 11.6.2 any Customer Data, especially data restored from unknown sources, may contain viruses or other malware and the Customer shall be responsible for protecting its systems with respect to the receipt of data and shall advise its employees, representatives, agents and third party recipients to take similar precautions;
- 11.6.3 if in the course of the examination of computers, telephones or other electronic devices, or the examination of electronic media, software content or materials in hard copy form TM (or any TM Affiliate or sub-contractor) observes or otherwise comes into possession of prohibited material, such as images the mere possession of which TM (or any TM Affiliate or sub-contractor) reasonably believes to be unlawful, TM (or any TM Affiliate or sub-contractor) may be legally required to report its findings to the appropriate legal authorities. To the extent TM (or any TM Affiliate or sub-contractor) reasonably believes is permitted by Applicable Laws, TM will notify the Customer of its intention to disclose the existence and/or content of such prohibited material to the appropriate authorities;
- 11.6.4 if the Consultancy Services or any other Services include the provision of penetration testing services, the penetration testing services are intended to probe and exploit system weaknesses, which can cause damage to vulnerable systems:
  - 11.6.4.1 TM shall not be liable for any Loss to Customer Data and/or any systems resulting from penetration testing or threat simulation provided by TM under these Terms and/or a Contract; and
  - 11.6.4.2 the Customer shall: (a) perform all necessary backups; (b) only use the relevant Services in production environment or other systems for which the Customer accepts the risk of damage; and (c) take other appropriate precaution measures the Customer deems appropriate to protect the relevant environment.

11.7 The parties agree that the provisions of this clause 11 are considered by them to be reasonable in all the circumstances, having taken into account section 11 and the guidelines in schedule 2 of the Unfair Contract Terms Act 1977 and the nature of the Consultancy Services and the Fees.

## 12 Term and Termination

- 12.1 The Agreement shall commence on the Effective Date and shall continue for the Initial Term and, thereafter, shall be automatically renewed for a Renewal Term, unless and until:
  - 12.1.1 either party notifies the other party of termination by giving the other party not less than ninety (90) days' written notice; and
  - 12.1.2 otherwise terminated in accordance with the provisions of TM's Engagement Letter or these Terms.
- 12.2 The Initial Term together with any subsequent Renewal Terms shall constitute the **"Term"**.
- 12.3 Each Contract shall commence on the relevant SoW Commencement Date. The Contract shall run for successive monthly or annual periods as specified in the relevant SoW, and shall automatically renew on expiry for subsequent periods of equivalent duration unless expressly provided otherwise in the relevant SoW, and until either party gives termination notice to the other in accordance with the provisions of the Agreement and/or the relevant SoW.



- 12.4 Without affecting any other right or remedy available to it, either party may terminate the Agreement and/or a Contract with immediate effect by giving written notice to the other party if the other party commits a material breach of any term of the Agreement and/or the Contract in question that:
- 12.4.1 is irremediable; or
  - 12.4.2 if such breach is remediable, is not so remedied within thirty (30) days from written notice requiring remedy of the material breach.
- 12.5 Without limiting TM's rights to terminate under clause 12.4, TM may terminate the Agreement and/or a Contract with immediate effect upon written notice if:
- 12.5.1 the Customer (or any of its employees and representatives, as applicable):
    - (a) fails to pay any amount due under the relevant Contract; and/or
    - (b) commits any breach (material or otherwise) of any one or more of the following clauses: 5 (Customer Obligations); 8 (Intellectual Property Rights) or 9 (Confidentiality); or
  - 12.5.2 the Customer is adjudged bankrupt or insolvent; or all or a substantial portion of the assets of the Customer are transferred to an assignee for the benefit of creditors, to a receiver or trustee in bankruptcy, or a proceeding is commenced by or against the Customer for relief under bankruptcy or similar laws and such proceeding is not dismissed within thirty (30) days.
- 12.6 The termination of the Agreement for any reason shall not automatically terminate any Contract entered into prior to termination, and such Contracts shall continue in full force and effect unless and until the Contract is terminated in accordance with its terms.

### **13 Consequences of Termination**

- 13.1 On termination or expiry of the Agreement and/or a Contract for any reason:
- 13.1.1 all rights and licences granted under the Agreement and/or the Contract concerned shall immediately terminate and the Customer must cease using the Services and Deliverables, unless otherwise expressly provided to the contrary in these Terms;
  - 13.1.2 each party shall return, and make no further use of, any equipment, property, and other items (and all copies of them) belonging to the other party;
  - 13.1.3 subject to clause 13.2 below, any Fees already paid shall be non-refundable;
  - 13.1.4 any amounts invoiced under the terminated Contract as at the date of termination shall become immediately due and payable;
  - 13.1.5 except for any anonymised technical data, TM may destroy or otherwise dispose of any of the Customer Materials in its possession unless TM receives, no later than five (5) days from the effective date of the termination or expiry of the Agreement and/or the relevant Contract, a written request for the delivery to the Customer of such Customer Materials; and
  - 13.1.6 where no invoice has been submitted, the Customer shall promptly pay for any Services and/or Deliverables provided pursuant to the Agreement and/or the relevant Contract through the effective date of termination of the Agreement and/or Contract.
- 13.2 If TM has terminated a Contract for convenience and in the event of an advanced payment for any part of the Services and/or Deliverables by the Customer, TM shall refund to the Customer any prepaid but unused Fees on a pro-rata basis.
- 13.3 Termination or expiry of the Agreement and/or the relevant Contract (howsoever occurring) shall be without prejudice to any rights or liabilities which may have accrued up to the date of such termination or expiry and it shall not affect the coming into force or the continuance in force of any of its provisions which are expressly or by implication intended to come into or continue in



force on or after such termination or expiry, including the following clauses: 4 (Services); 5 (Customer Obligations); 7 (Payment); 8 (Intellectual Property Rights); 11 (Liability); 13 (Consequences of Termination); and 16 (General).

## 14 Non-solicitation

- 14.1 During the Term of the relevant Contract and for a period of twelve (12) from the expiry date or termination of the Contract, the Customer shall not:
- 14.1.1 solicit, entice away or attempt to entice away from continuing to be employed or otherwise engaged by TM any member of TM personnel or sub-contractor;
  - 14.1.2 counsel, procure, or otherwise assist any person to do any of the acts referred to in clause 14.1.1.
- 14.2 parties agree that the restriction in clause 14.1:
- 14.2.1 does not prohibit the Customer from considering an application for employment submitted on an unsolicited basis or in response to a general advertisement; and
  - 14.2.2 is reasonable in the circumstances of these Terms and the relevant Contract.

## 15 Force Majeure

- 15.1 Other than in respect of the Customer's obligation to pay the Fees and TM's costs and expenses, neither party shall have any liability to the other under a Contract if it is prevented from or delayed in performing its obligations, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

## 16 General

- 16.1 **Survival.** The rights and obligations under provisions of these Terms and a Contract which expressly or by their nature survive termination shall remain in full force and effect.
- 16.2 **Sub-contracting.** TM may sub-contract the performance of its obligations (or any part thereof) to any of its Affiliates or any third party provided that TM shall remain responsible for all acts and omissions of such third party that result in a breach of the relevant Contract.
- 16.3 **Variations.** No variation of these Terms and the provisions of a SoW shall be effective unless it is in writing and signed by the parties' authorised representatives.
- 16.4 **No Waiver.** No failure or delay by a party to exercise any right or remedy provided under a Contract or by Applicable Laws shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 16.5 **Severability.** If any provision (or part of a provision) of these Terms or a SoW is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 16.6 **Entire Agreement.** the parties agree that the Agreement and the Contracts entered into pursuant to it constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into the Agreement or a Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) relating to the subject matter of the

Agreement or the relevant Contract, other than as expressly set out in the Agreement and that Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement or the Contract concerned.

#### 16.7 Assignment

16.7.1 Subject to clause 16.7.2, neither party shall assign any of its rights under a Contract without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

16.7.2 TM may at any time assign any or all of its rights and obligations under a Contract to any of its Affiliates or in connection with a merger or sale or acquisition of all or substantially all of its assets or voting rights, provided that TM gives written notice of such dealing to the Customer as soon as practicably possible afterwards.

16.8 **Third Party Rights.** These Terms do not confer any rights on any person or party (other than the parties to the relevant Contract) pursuant to the Contracts (Rights of Third Parties) Act 1999.

#### 16.9 Notices

16.9.1 Any notice or other communication given to a party under or in connection with these Terms shall be in writing and shall be delivered by: (a) hand or pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or (b) except with respect to the service of legal proceedings, e-mail to the addresses referred to in clause 16.9.2 (below).

16.9.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or
- (c) if sent by e-mail to the e-mail addresses specified in the SoW from an authorised representative of sufficient authority to give the notice, upon the generation of a receipt notice by the recipient's server or, if such notice is not generated, upon delivery to the recipient's server.

16.10 **Governing Law and jurisdiction.** A Contract and any dispute or claim arising out of or in connection with that Contract (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract in question (including non-contractual disputes or claims).

# Appendix 1: Third Party Terms

The Customer acknowledges and agrees that all Third Party Software and Third Party Terms are provided “as is” and “as available” and TM:

- (a) has no control over the Third Party Software and Third Party Terms and therefore, TM is not responsible for their content and/or availability;
- (b) does not endorse the content, or other material contained in, the Third Party Software and/or Third Party Terms and gives no warranties with respect to the same.

Third Party Software	Third Party Terms and Conditions
<b>CrowdStrike, Inc.</b>	CrowdStrike provides EDR software and data collection services which assists TM in the detection and response to malware and malicious behaviour. Terms: <a href="https://www.crowdstrike.com/terms-conditions/">https://www.crowdstrike.com/terms-conditions/</a>
<b>Refraction Point, Inc.</b> ("LimaCharlie")	LimaCharlie provides EDR software and data collection services which assists TM in the detection and response to malware and malicious behaviour. Terms: <a href="https://www.limacharlie.io/terms">https://www.limacharlie.io/terms</a>
<b>SentinelOne, Inc.</b>	SentinelOne provides EDR software and data collection services which assists TM in the detection and response to malware and malicious behaviour. Terms: <a href="https://www.sentinelone.com/legal/limited-use-ir-license-agreement/">https://www.sentinelone.com/legal/limited-use-ir-license-agreement/</a>

# Appendix 2:

## Data Processing Agreement

This Data Processing Agreement is made on the date on which the Agreement was signed.

### Background

- (A) The parties have entered into an agreement that applies to the provision of consulting services (“**Agreement**”) that requires TM to process Personal Data on behalf of the Customer.
- (B) This Data Processing Agreement (“**DPA**”) sets out the additional terms, requirements and conditions on which TM will process Personal Data when providing Services under the Agreement. This DPA contains the mandatory clauses required by Article 28(3) of the Retained EU Law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR) for contracts between controllers and processors and the General Data Protection Regulation ((EU) 2016/679).

### 1 Definitions and Interpretation

- 1.1 In this DPA, capitalised terms have the following meanings:
  - 1.1.1 “**Business Purpose**” means the services to be provided by TM to the Customer as described in the Agreement and any other purpose agreed between the Parties in writing.
  - 1.1.2 “**Commissioner**” means the Information Commissioner (see Article 4(A3), UK GDPR and section 114, DPA 2018).
  - 1.1.3 “**Controller**”, “**Processor**”, “**Data Subject**”, “**Personal Data**”, “**Personal Data Breach**” and “**Processing**” have the meaning given to them in the Applicable Data Protection Laws.
  - 1.1.4 “**Standard Contractual Clauses (SCCs)**” the ICO’s International Data Transfer Agreement for the transfer of personal data from the UK; and/or the ICO’s International Data Transfer Addendum to EU Commission Standard Contractual Clauses and/or the European Commission’s Standard Contractual Clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 as set out in the Annex to Commission Implementing Decision (EU) 2021/914; and/or the European Commission’s Standard Contractual Clauses for the transfer of Personal Data from the European Union to processors established in third countries (controller-to-processor transfers), as set out in the Annex to Commission Decision 2010/87/EU, or such alternative clauses as may be approved by the European Commission or by the UK from time to time.
- 1.2 This DPA is subject to the terms of the of the Agreement and is incorporated into the Agreement.
- 1.3 The Annexes form part of this DPA and will have effect as if set out in full in the body of this DPA.
- 1.4 A reference to writing or written includes emails.
- 1.5 In the case of conflict or ambiguity between:
  - 1.5.1 any provision contained in the body of this DPA and any provision contained in the Annexes, the provision in the body of this DPA will prevail;

- 1.5.2 any of the provisions of this DPA and the provisions of the Agreement, the provisions of this DPA will prevail; and
- 1.5.3 any of the provisions of this DPA and any executed SCC, the provisions of the executed SCC will prevail.

## **2 Personal Data Types and Processing Purposes**

- 2.1 The Parties acknowledge and agree that for the purposes of the Applicable Data Protection Laws:
  - 2.1.1 the Customer is the Controller and TM is the Processor.
  - 2.1.2 the Customer retains control of the Personal Data and remains responsible for its compliance obligations under the Applicable Data Protection Laws, including but not limited to providing any required notices and obtaining any required consents, and for the written processing instructions it gives to TM.
  - 2.1.3 Annex A of each SoW sets out the scope, nature and purpose of processing by TM, the duration of the processing and the types of Personal Data and categories of Data Subject for each Contract.

## **3 TM's Obligations**

- 3.1 TM will only process the Personal Data to the extent, and in such a manner, as is necessary for the Business Purposes in accordance with the Customer's written instructions. TM must promptly notify the Customer if, in its opinion, the Customer's instructions do not comply with the Applicable Data Protection Laws.
- 3.2 TM shall comply with written instructions from the Customer requiring TM to amend, transfer, delete or otherwise process the Personal Data, or to stop, mitigate or remedy any unauthorised processing.
- 3.3 TM will maintain the confidentiality of the Personal Data and will not disclose the Personal Data to third parties unless the Customer or this DPA specifically authorises the disclosure, or as required by domestic law, court or regulator (including the Commissioner).
- 3.4 TM must promptly notify the Customer of any changes to the Applicable Data Protection Laws that may reasonably be interpreted as adversely affecting TM's performance of the Agreement or this DPA.

## **4 TM's Employees**

- 4.1 TM will ensure that all its employees:
  - 4.1.1 are informed of the confidential nature of the Personal Data and are bound by confidentiality obligations and use restrictions in respect of the Personal Data;
  - 4.1.2 have undertaken training on the Applicable Data Protection Laws relating to handling Personal Data and how it applies to their particular duties; and
  - 4.1.3 are aware both of TM's duties and their personal duties and obligations under the Applicable Data Protection Laws and this DPA.

## **5 Security**

- 5.1 TM shall implement appropriate technical and organisational measures against unauthorised or unlawful processing, access, copying, modification, reproduction, display or distribution of the Personal Data, and against accidental or unlawful loss, destruction, alteration, disclosure or damage of Personal Data including, but not limited to, the security measures set out in Clause 5.2 below.

- 5.2 TM shall implement such measures to ensure a level of security appropriate to the risk involved, including as appropriate:
- 5.2.1 the pseudonymisation and encryption of Personal Data;
  - 5.2.2 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
  - 5.2.3 the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and
  - 5.2.4 a process for regularly testing, assessing, and evaluating the effectiveness of the security measures.

## **6 Personal Data Breach**

- 6.1 TM shall without undue delay notify the Customer if it becomes aware of:
- 6.1.1 the loss, unintended destruction or damage, corruption, or unavailability of part or all of the Personal Data. TM will restore such Personal Data as soon as possible.
  - 6.1.2 any accidental, unauthorised, or unlawful processing of the Personal Data; or
  - 6.1.3 any Personal Data Breach.
  - 6.1.4 Where TM becomes aware of (a), (b) or (c), it shall, without undue delay, also provide the Customer with the following information:
  - 6.1.5 description of the nature of (a), (b) or (c), including the categories of in-scope Personal Data and approximate number of both Data Subjects and the Personal Data records concerned;
  - 6.1.6 the likely consequences; and
  - 6.1.7 a description of the measures taken or proposed to be taken to address (a), (b) or (c), including measures to mitigate its possible adverse effects.
- 6.2 Following any accidental, unauthorised or unlawful Personal Data processing or Personal Data Breach, the Parties will co-ordinate with each other to investigate the matter. Further, TM will reasonably co-operate with the Customer in the Customer's handling of the matter, including but not limited to:
- 6.2.1 making available all relevant records, logs, files, data reporting and other materials required to comply with all Applicable Data Protection Laws or as otherwise reasonably required by the Customer, providing these are not business confidential documents for TM; and
  - 6.2.2 taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the Personal Data Breach or accidental, unauthorised or unlawful Personal Data Processing.
- 6.3 TM will not inform any third party of any accidental, unauthorised or unlawful processing of all or part of the Personal Data and/or a Personal Data Breach without first obtaining the Customer's written consent, except when required to do so by domestic law.
- 6.4 TM agrees that the Customer has the sole right to determine:
- 6.4.1 whether to provide notice of the accidental, unauthorised or unlawful processing and/or the Personal Data Breach to any Data Subjects, the Commissioner, other in-scope regulators, law enforcement agencies or others, as required by law or regulation or in the Customer's discretion, including the contents and delivery method of the notice; and
  - 6.4.2 whether to offer any type of remedy to affected Data Subjects, including the nature and extent of such remedy.

## **7 Cross-Border Transfer of Personal Data**

- 7.1 Where such consent is granted, TM may only process, or permit the processing, of the Personal Data outside the EEA under the following conditions:
- 7.1.1 TM is processing the Personal Data in a territory which is subject to adequacy regulations under the Applicable Data Protection Laws that the territory provides adequate protection for the privacy rights of individuals. TM shall identify in Annex A of each SoW the territory that is subject to such adequacy regulations; or
  - 7.1.2 TM participates in a valid cross-border transfer mechanism under the Applicable Data Protection Laws, so that TM (and, where appropriate, the Customer) can ensure that appropriate safeguards are in place to ensure an adequate level of protection with respect to the privacy rights of individuals as required by Article 46 of the UK GDPR and EU GDPR. TM shall identify in Annex A of each SoW the transfer mechanism that enables the parties to comply with these cross-border data transfer provisions and TM must immediately inform the Customer of any change to that status; or
  - 7.1.3 the transfer otherwise complies with the Applicable Data Protection Laws for the reasons set out in Annex A of each SoW.
- 7.2 If the Customer consents to appointment by TM of a subcontractor located outside the EEA in compliance with the provisions of clause 8 below, then the Customer authorises TM to enter into SCCs for the transfer of Personal Data to the subcontractor.

## **8 Subcontractors**

- 8.1 The Customer authorises the appointment of the subcontractors listed in Annex A.
- 8.2 Subject to clause 8.1 above, TM may authorise other subcontractor to process the Personal Data if:
- 8.2.1 the Customer is provided with an opportunity to object to the appointment of each subcontractor within five (5) Business Days after TM supplies the Customer with full details in writing regarding such subcontractor;
  - 8.2.2 TM enters into a written contract with the subcontractor that contains terms substantially the same as those set out in this DPA, in particular, in relation to requiring appropriate technical and organisational data security measures, and, upon the Customer's written request, and ensure such subcontractor complies with all such terms; and
  - 8.2.3 where the subcontractor fails to fulfil its obligations under the written agreement with TM which contains terms substantially the same as those set out in this DPA, TM remains liable to the Customer for the subcontractor's performance of its agreement obligations.

## **9 Complaints, Data Subject Request and Third-Party Rights**

- 9.1 TM shall take such technical and organisational measures as may be appropriate to enable the Customer to comply with:
- 9.1.1 the rights of Data Subjects under the Applicable Data Protection Laws, including subject access rights, the rights to rectify, port and erase personal data, object to the processing and automated processing of personal data, and restrict the processing of personal data; and
  - 9.1.2 information or assessment notices served on the Customer by the Commissioner or other relevant regulator under the Applicable Data Protection Laws.



- 9.2 TM must notify the Customer promptly in writing if it receives any complaint, notice or communication that relates directly or indirectly to the processing of the Personal Data or to either Party's compliance with the Applicable Data Protection Laws.
- 9.3 TM shall notify the Customer within five (5) Business Days if it receives a request from a Data Subject for access to their Personal Data or to exercise any of their other rights under the Applicable Data Protection Laws.
- 9.4 It shall be the Customer's responsibility to reply to all such requests as required by the Applicable Data Protection Laws.

## 10 Term and Termination

- 10.1 This DPA will remain in full force and effect so long as:
- 10.2 the Agreement remains in effect; or
- 10.3 TM retains any of the Personal Data related to the Agreement in its possession or control ("**Term**").
- 10.4 Any provision of this DPA that expressly or by implication should come into or continue in force on or after termination of the Agreement in order to protect the Personal Data will remain in full force and effect.
- 10.5 If a change in any Applicable Data Protection Laws prevents either party from fulfilling all or part of its Agreement obligations, the Parties may agree to suspend the processing of the Personal Data until that processing complies with the new requirements. If the Parties are unable to bring the Personal Data processing into compliance with the Applicable Data Protection Laws either Party may terminate the Agreement with immediate effect on written notice to the other Party.

## 11 Data Return and Destruction

- 11.1 At the Customer's request, TM will give the Customer a copy of all or part of the Personal Data in its possession or control. To the extent that the Customer has not notified TM on the termination end date or expiry of the Agreement that it requires TM to return such Personal Data, TM shall securely delete or destroy all or any of the Personal Data related to this DPA in its possession or control.
- 11.2 If any law, regulation, or government or regulatory body requires TM to retain any documents or materials or Personal Data that TM would otherwise be required to return or destroy, it will notify the Customer in writing of that retention requirement, giving details of the documents, materials or Personal Data that it must retain, the legal basis for retention, and establishing a specific timeline for deletion or destruction once the retention requirement ends.

## 12 Records

- 12.1 TM will keep detailed, accurate and up-to-date written records regarding any processing of the Personal Data, including but not limited to, the access, control and security of the Personal Data, subcontractors, the processing purposes, categories of processing, any transfers of personal data to a third country and related safeguards, and a general description of the technical and organisational security measures referred to in clause 5.1 ("**Records**").
- 12.2 TM will ensure that the Records are sufficient to enable the Customer to verify TM's compliance with its obligations under this DPA and TM will provide the Customer with copies of the Records upon request.

**13 Audit**

- 13.1 Once a year, TM will conduct site audits of its Personal Data processing practices and the information technology and information security controls for all facilities and systems used in complying with its obligations under this DPA.
- 13.2 On the Customer's written request, TM will make all of the relevant audit reports available to the Customer for review. The Customer will treat such audit reports as TM's confidential information under the Agreement.
- 13.3 TM will address any exceptions noted in the audit reports with the development and implementation of a corrective action plan by TM's management.

**14 Liability**

- 14.1 The liability of the Parties to one another shall be limited in accordance with the provisions of clause 11 (Limitation of Liability) of the Agreement in relation to all direct, indirect or consequential losses, damages, claims, fees (including but not limited to administrative, professional advisor or legal fees), penalties, expenses, taxes, costs and any third party claims against one party, howsoever arising under or in connection with this DPA, whether as a result of a breach of any clause of this DPA by a Party, or any breach of Applicable Data Protection Laws.

**15 Notice**

- 15.1 Any notice given to a Party under or in connection with this DPA must be in writing and delivered to:
  - For the Customer: The person defined as Client Contact in section 1 of the SoW.
  - For TM: The person defined as Relationship Manager in section 1 of the SoW.
- 15.2 Clause 35 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 15.3 The parties agree that this Appendix 2: Data Processing Agreement shall form part of the Agreement, and each agree to be bound by the terms of the Agreement.