

# PSONA 12 Limited Standard Terms

## 1 DEFINITIONS AND INTERPRETATION

1.1 In these Standard Terms:

**Agreement Personal Data** means Personal Data which is to be Processed under the Contract, as more particularly described in the Data Processing Annex;

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

**Confidential Information** means in relation to either party (the "**Disclosing Party**") any and all information whether in oral, tangible or in documented form concerning the business or affairs of that party (or its Group companies) which is disclosed to or otherwise learnt, acquired or developed by the other party (the "**Receiving Party**") where (a) such information is by its nature confidential; (b) the Receiving Party knows or ought to know such information is confidential; or (c) such information is designated by the Disclosing Party as confidential;

**Contract** means these Standard Terms and the Scope of Work;

**Control** means in relation to a person, the power (whether direct or indirect) to direct or cause the direction of its affairs, whether by means of holding shares, possessing voting power, exercising contractual powers or otherwise; and "**Controls**" and "**Controlled**" will be construed accordingly;

**Customer** means the person(s), firm or company who procures any Service from PSONA;

**Customer Materials** means any content, text, materials, document, file, item or thing, in whatever form including audio and audio-visual materials, film screens, branding, logos, drawings, artwork, graphics, photographs, images, designs, business forms, information, descriptions, files, SMS or other messages and/or data, provided to PSONA;

**Data** means all data (including any personal data) belonging to the Customer or to any of the Customer's clients which is from time to time held or processed by PSONA in providing the Services;

**Data Processing Annex** means the annex(es) agreed by the parties in writing (as amended and updated from time to time) in relation to the relevant Scope of Work which sets out in respect of the Agreement Personal Data: (i) the subject-matter and duration of the Processing; (ii) the nature and purpose of the Processing; and (iii) the type of Personal Data and categories of Data Subjects, an example of which is set out in the Annex to these terms and conditions;

**Data Protection Laws** means any laws in force in the United Kingdom from time to time that relate to the Processing of personal data under the Contract, including: (i) the Data Protection Act 2018; (ii) the UK General Data Protection Regulation (being Regulation (EU) 2016/679 as amended by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019); and (iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003; and references to "**Data Processor**", "**Data Subjects**", "**Personal Data**", "**Process**", "**Processed**", "**Processing**", "**Processor**" and "**Supervisory Authority**" have the meanings set out in, and will be interpreted in accordance with, such laws;

**Data Security Incident** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Agreement Personal Data transmitted, stored or otherwise Processed;

**Deliverables** means those items (including content, copywriting, audio visual) which PSONA will provide and/or make available to or on behalf of the Customer as part of the Services including those (if any) identified or referred to in the Scope of Work;

**Disclosing Party** means either or both of PSONA and the Customer, disclosing Confidential Information to the other;

**Fees** means the fees for the Services set out in or referred to in the Scope of Work;

**Force Majeure** means any act, event, omission or accident beyond PSONA's reasonable control which will include acts of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, epidemic, insurrection or civil disturbance; terrorism; governmental actions; acts or omissions of a third party, including any subcontractor; strikes, lockouts or other industrial actions or trade disputes; difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery; restraints or delays affecting carriers; malicious damage or acts of hackers; failure in information technology or telecommunications services; failure of a third party software manufacturer; and a virus that cannot be detected or controlled by the use of reasonable anti-virus protective measures;

**Group** means together a person and any other person that Controls, is Controlled by or is under common Control with the first person from time to time;

**Intellectual Property Rights** means all intellectual and industrial property rights including patents, know how, registered trademarks, registered designs, utility models, unregistered design rights and unregistered trademarks, service marks, rights to prevent passing off for unfair competition and copyright (including future copyright), database rights, domain names, topography rights and any other rights in any invention, discovery or process, in each case subsisting at any time in any part of the world (whether registered or unregistered) and together with all renewals pending applications or rights to apply for registration, and extensions thereof;

"**International Transfer**" means a transfer of Agreement Personal Data which is undergoing Processing, or which is intended to be Processed after transfer, to a country outside the United Kingdom (or any part of it) and the countries that comprise the European Economic Area;

"**Liability**" means liability arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability under an indemnity contained in the Contract and/or arising from a breach of, or a failure to perform or defect or delay in performance of, a party's obligations under the Contract, in each case howsoever caused including if caused by negligence;

**PSONA** means PSONA 12 Limited t/a TWELVE (company number 04536661);

**PSONA Tools** means all know-how, software, development tools, processes, methodologies and technologies, documents, data and other material (but excluding any Data and/or Customer Materials), the Intellectual Property Rights of which are vested in or used by PSONA in performing the Services whether or not such PSONA Tools are created as a result of the provision of the Services to the Customer and/or at the request of the Customer;

**Receiving Party** means either or both of PSONA and the Customer, in receipt of Confidential Information disclosed to it by the other;

**Scope of Work** means the brief (if any) prepared by PSONA and agreed to by the Customer, together with a detailed specification of the Services to be provided as prepared by PSONA and the Fees;

**Services** means those content, audio visual, design and consultancy services described or referred to in the Scope of Work; and

**Sub-Processor** means any third party appointed by PSONA to Process Agreement Personal Data.

- 1.2 Except as otherwise stated in these Standard Terms or required by their context: (a) references to writing or written includes faxes but not email; (b) references to parties are to PSONA and the Customer; (c) references to a Paragraph are to the relevant paragraph of these Standard Terms; and (d) any words following the words "include", "includes", "including", "in particular" or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them; and (e) the rule known as the ejusdem generis rule will not apply and accordingly the meaning of general words introduced by the word "other" or a similar word or expression will not be restricted by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things.

## **2 ENTIRE AGREEMENT**

- 2.1 The Customer acknowledges and agrees that the Contract contains the only terms and conditions upon which PSONA will provide the Services and will govern the relationship between PSONA and the Customer to the entire exclusion of all other terms or conditions and all previous oral or written representations. No terms or conditions endorsed upon, delivered with or contained in any purchase order, confirmation of order, Customer prepared brief or any other document will form part of the Contract whether or not such document is referred to in the Contract.
- 2.2 Any variation to the Contract will have no effect unless expressly agreed in writing and signed by an authorised representative of each party.

## **3 SPECIFICATION**

- 3.1 All advertising, samples, artwork, specifications, illustrations or descriptive material made available by PSONA and any descriptions or illustrations contained in PSONA's sales literature, catalogues, brochures, quotation, price list, acknowledgement of order, invoice, service level agreement or other document or other information issued by PSONA (including on its website) are issued or published for the sole purpose of giving an approximate idea of the Services and Deliverables described in them. They will not form part of the Contract unless specifically stated otherwise. All documents containing such illustrative or descriptive material (as well as the Intellectual Property Rights in such material) shall remain the exclusive property of PSONA or its third party licensors, and must not be copied, loaned or transferred.
- 3.2 Any typographical, clerical or other error or omission in any of the documents referred to in Paragraph 3.1 shall be subject to correction without any liability on the part of PSONA.
- 3.3 The Customer must ensure that any artwork, sketches, files containing Data, specifications, descriptions, information or other instructions supplied by or on behalf of the Customer in connection with the manufacture or sale of the Deliverables or provision of the Services are supplied to PSONA in the manner (including regarding format and method of delivery) directed by PSONA and are accurate, unambiguous and clearly legible and meet the Customer's requirements.
- 3.4 Where PSONA is supplied with Customer Materials or is requested to use specific material by the Customer when undertaking the Services:
- (a) PSONA will not be liable for any delay in or inability to perform the Services or for any additional costs incurred in performance of the Services or for any defect or error in the Services or Deliverables or errors in or additional costs associated with their delivery to the extent that such delay, inability, costs, defect or error were caused by defects in or unsuitability of the Customer Materials or specified materials, or the Customer's failure to supply the Customer Materials to PSONA in the manner (including regarding format and method of delivery) directed by PSONA, it being noted and agreed that PSONA may not be able to identify defects in the Customer Materials or specified materials, or the unsuitable nature of the Customer Materials or specified materials until production has commenced, and where additional costs are incurred by PSONA such costs shall be recoverable from the Customer;
  - (b) PSONA may reject any of the Customer Materials or specified materials which in its opinion are unsuitable;
  - (c) PSONA may, if the Customer Materials or specified materials are found to be unsuitable during production or have been supplied to PSONA otherwise than in the manner (including regarding format and method of delivery) directed by PSONA, charge the additional production costs incurred by PSONA to the Customer after notifying, where possible, the Customer in writing of the unsuitability of the Customer Materials or specified materials; and
  - (d) PSONA accepts no responsibility for imperfect work caused by defects in or unsuitability of the Customer Materials or specified materials.

## **4 THE SERVICES**

- 4.1 PSONA will: (a) perform its obligations as set out in the Contract; (b) ensure the Services are in line with the Scope of Work; (c) perform the Services using reasonable skill and care.
- 4.2 PSONA may make any changes to the Scope of Work, design, materials or functionality of the Deliverables or provision of the Services: (a) which are required to comply with any applicable legal or regulatory requirements; (b) are required or advisable to prevent the Services and/or Deliverables infringing third party rights, including Intellectual Property Rights; or (c) which in PSONA's reasonable opinion, do not materially affect the quality or performance of the Services.
- 4.3 If PSONA is in breach of Paragraph 4.1, PSONA will at its option re-perform the Services (or the defective part) or refund the Fees pro rata, provided that if PSONA so requests, the Customer will return to PSONA or destroy the Deliverables or the part of such Deliverables which is defective. If PSONA complies with this Paragraph 4.3 it will have no further liability for a breach of Paragraph 4.1 in respect of such Services.

## **5 CUSTOMER RESPONSIBILITIES**

- 5.1 The Customer will comply with its obligations under the Contract and with any reasonable instructions of PSONA and will provide all such assistance to PSONA as PSONA may request including the provision of (a) the Customer Materials in the manner (including regarding format and method of delivery) directed by PSONA; and (b) approvals and sign-off by the Customer of the Deliverables in accordance with these Standard Terms.
- 5.2 The Customer is responsible for obtaining, at its own cost, all necessary consents, clearances and authorisations which may be required by all applicable law and any regulatory and other authorities or commercial providers in respect of its receipt of the Services and use of the Deliverables. In particular, the Customer agrees that it, and not PSONA, is responsible for ensuring the use of the Customer's own and any third party photographs, images, sounds and text in the Deliverables does not infringe third party Intellectual Property Rights, whether those third party materials are sourced by the Customer or by PSONA on the Customer's behalf.
- 5.3 It is a condition of the Contract and the Customer is responsible for checking that any Customer specifications or requirements, Customer Materials, Data and other materials or instructions provided or specified by or on behalf of the Customer to PSONA (**Customer-supplied items**) and for reviewing and approving any Deliverables (**PSONA-supplied items**) to ensure that each such Customer-supplied or PSONA-supplied item will: (a) not contain anything that is libellous, defamatory, offensive or abusive; (b) not be of an obscene, nuisance or threatening nature; (c) not be calculated to demean or be discriminatory of any person or infringe their human or moral rights; (d) comply with and not infringe or contain anything which is alleged to infringe the statutory or common law rights of any person including any third party Intellectual Property Rights; and (e) comply with all applicable laws, codes of practice, guidance and regulatory requirements from time to time (**Regime**) including but without limitation the Data Protection Laws, the Consumer Credit Act 1974, the Financial Services and Markets Act 2000, the Consumer Credit (Advertisements) Regulations 2004 and the Consumer Credit

(Advertisements) Regulations 2010, any guidance issued by legal and regulatory bodies regarding advertising and sales promotion including, but without limitation, the UK Code of Broadcast Advertising, Sales Promotion and Direct Marketing, the Direct Marketing Association Code of Practice and the rules of the Advertising Standards Authority, the APACS standards and any guidance, codes of practice and regulatory requirements regarding communications including those of Ofcom, the Office of Fair Trading, the Financial Conduct Authority, the Prudential Regulation Authority, the Trading Standards Services and the Advertising Standards Authority; and (f) meet the Customer's requirements.

- 5.4 The Customer will comply with all applicable laws and regulatory requirements in its receipt of the Services and the use of the Deliverables by the Customer or by PSONA or another third party on the Customer's behalf.

## **6 SIGN-OFF**

- 6.1 PSONA will provide the Customer with proofs of the Deliverables which the Customer must sign-off in accordance with this Paragraph 6. The Customer must sign-off proofs in sufficient time for PSONA to meet its obligations under the Contract. The proofs may be sent to the Customer by email with a link to a website, or in a sample email (or any other means) which the Customer will access to review the proofs or may be delivered to the Customer.
- 6.2 The Customer will check all proofs prepared by PSONA and will promptly advise PSONA if any proof is in any respect incorrect or requires amendment or is infringing, defamatory, inaccurate, misleading or otherwise contrary to any applicable legal or regulatory requirement and/or may give rise to legal or regulatory action.
- 6.3 Following sign-off PSONA will not be responsible for errors in the Deliverables or the Services, unless it has failed to produce the Deliverables or perform the Services materially in accordance with the proofs signed-off by the Customer.
- 6.4 The Customer will pay for any additional work that may be necessary due to the Customer's failure to correct or amend a proof correctly prior to sign-off.
- 6.5 PSONA may charge the Customer an additional charge if alterations, additional proofs and/or other works are carried out: (a) at the Customer's request after proofs or samples have been signed-off; (b) where style, type or layout is left to PSONA's judgement and the Customer requests variations to that aspect or aspects of the proof; or (c) where drawings, proofs or other instructions supplied to PSONA by or on behalf of the Customer are not clear and/or not legible and/or contained errors.

## **7 CHANGES TO SCOPE**

- 7.1 If at any time the Customer wishes to make any alterations to all or any part of the Services including the Scope of Work, and/or Customer Materials and/or Data then the Customer will provide PSONA with full written particulars of such alterations and with such further information as PSONA may require.
- 7.2 PSONA will either decline to undertake such alterations or will submit to the Customer a quotation for such alterations specifying what changes (if any) will be required to the Services including to Fees and the Deliverables.
- 7.3 Upon receipt of such quotation the Customer will either: (a) accept such quotation, in which case the Services will be deemed to be amended accordingly; or (b) withdraw the proposed alterations in which case the Contract will continue in force unchanged.

## **8 FEES AND PAYMENT**

- 8.1 The Fees are set out in or referred to in the Scope of Work and are exclusive of value added tax.
- 8.2 The Customer will pay the Fees within thirty (30) days from the date of receipt of the invoice. If the Fees are overdue PSONA may, in addition to any other right or remedy, suspend the Customer's access to the Services and/or suspend the provision of the Services without liability to the Customer.
- 8.3 PSONA reserves the right to charge interest on any payment not made when due at the rate of 4% (four per cent) above the base rate of Barclays Bank from time to time. Interest will be charged from the day that any amount becomes a late payment until it represents cleared funds in PSONA's bank account.
- 8.4 PSONA will have a lien on all Customer Materials and any other property of the Customer held by PSONA for all monies due from the Customer to PSONA under the Contract.
- 8.5 Without prejudice to any other right or remedy which PSONA may have if any sum of money will be recoverable from the Customer or payable by the Customer to PSONA, PSONA may deduct such sum from any sums payable to the Customer under the Contract.
- 8.6 Payments shall be made in such currency and into such bank account as PSONA shall nominate from time to time in writing.
- 8.7 Payment will not be deemed to have been received until PSONA has received cleared funds.
- 8.8 All payments payable to PSONA under the Contract shall become due immediately upon termination of the Contract despite any other provision.
- 8.9 If the production or delivery of the Deliverables or the provision of the Service is suspended at the request of the Customer or delayed due to the default of the Customer, PSONA may charge the Customer for any work carried out to such time, any materials ordered for the Customer and any other additional costs incurred as a result of such suspension or delay, and such charge shall be payable immediately by the Customer.

## **9 CUSTOMER'S PROPERTY**

- 9.1 All Customer Materials, Data and any other property supplied to PSONA by or on behalf of the Customer will remain the property of and at the risk of the Customer.
- 9.2 PSONA reserves the right to make a reasonable charge for storage of any Customer Materials, Data and/or any other property of the Customer left with it after termination or expiry of the Contract and which the Customer instructs PSONA not to destroy. If the Customer does not wish to pay for such storage PSONA may destroy such property after giving the Customer not less than four weeks' notice of the charge for storage and such destruction shall be deemed to be on the Customer's instructions.

## **10 INTELLECTUAL PROPERTY RIGHTS**

- 10.1 The Customer warrants that it owns (or is licensed to use in accordance with the Contract) all rights, including Intellectual Property Rights, in the Customer Materials and the Data, and the Customer grants to PSONA and to its sub-contractors a non-exclusive, royalty free, sub-licensable licence to use, reproduce, adapt and exploit the Customer Materials and the Data (including all Intellectual Property Rights therein) for the purpose of PSONA performing its obligations under the Contract.
- 10.2 Subject to Paragraphs 10.3 and 10.4 and the payment by the Customer of the full amount of the Fees, all Deliverables and Intellectual Property Rights therein will, as between PSONA and the Customer, become the exclusive property of the Customer. To the extent that any such rights vest in the PSONA, PSONA will assign all its right, title and interest in the Intellectual Property Rights in any Deliverables (including any future rights) to the Customer and will do all acts and execute all documents as may reasonably be required to vest all such rights in the Customer.

- 10.3 All PSONA Tools and Intellectual Property Rights therein are and will as between PSONA and the Customer remain the exclusive property of PSONA or its licensors and the Customer agrees and acknowledges that it will acquire no right title or interest therein. Subject to Paragraph 10.4 and to payment by the Customer of the full amount of the Fees, PSONA will grant to the Customer a non-exclusive, non-transferable, non-sub-licensable, perpetual, revocable licence to use PSONA's Intellectual Property Rights in the PSONA Tools for the sole express purpose for which the PSONA Tools were supplied, and the Customer will have no licence for any other use without the express written consent of PSONA.
- 10.4 The Customer acknowledges and agrees that: (a) where PSONA uses any product, service or material from a third party in connection with the provision of the Services excluding any stock images (**Third Party Material**) PSONA will to the extent necessary to allow the Customer to receive the Services, use its reasonable endeavours to procure, at the cost of the Customer, a licence of such rights in favour of the Customer or grant a sub-licence of the Third Party Material to the Customer; (b) PSONA will be entitled, at its sole discretion, to use design features, skills and techniques contained in the creation of the Deliverables and/or the provision of the Services, including fonts, typefaces, colours and other stylistic features and combinations thereof (**Features**), in materials produced by PSONA for other customers and for its own promotional and other purposes. All rights in such Features will remain vested in PSONA or its licensors and such use will not constitute an infringement of the Customer's rights.

## 11 DATA PROTECTION AND PRIVACY

- 11.1 The Customer authorises PSONA, on its own behalf and on behalf of the other members of its Group (as applicable), to Process the Agreement Personal Data during the term of the Contract as a Data Processor/Processor for the purpose set out in the Data Processing Annex.
- 11.2 The Customer warrants to PSONA, on its own behalf and on behalf of the other members of its Group, that:
- 11.2.1 it has all necessary rights to authorise PSONA and any Sub-Processors to Process Agreement Personal Data in accordance with the Contract and the Data Protection Laws; and
- 11.2.2 its instructions to PSONA and/or any Sub-Processor(s) relating to Processing of Agreement Personal Data will not put PSONA or any Sub-Processors in breach of Data Protection Laws.
- 11.3 If PSONA reasonably considers that any instructions from the Customer or a member of its Group relating to Processing of Agreement Personal Data may put PSONA and/or any Sub-Processors in breach of Data Protection Laws and/or any provision of the Contract, PSONA will be entitled not to carry out that Processing and will not be in breach of the Contract or otherwise liable to the Customer or any member of its Group as a result of its failure to carry out or delays in carrying out that Processing.
- 11.4 Each party will comply with the Data Protection Laws in respect of Agreement Personal Data.
- 11.5 Without prejudice to any provisions in the Contract expressly relating to subcontracting, the Customer gives general authorisation for PSONA to appoint other Processors and/or Sub-Processors to Process Agreement Personal Data for the purposes of PSONA performing its obligations and exercising its rights under the Contract. PSONA will inform the Customer of (but will not be required to obtain the Customer's consent to) any intended changes concerning the addition or replacement of such Processors and/or Sub-Processors.
- 11.6 If PSONA appoints a Sub-Processor, PSONA will put a written contract in place between PSONA and the Sub-Processor that specifies the Sub-Processor's Processing activities and imposes on the Sub-Processor substantially similar terms as appropriate to the sub-Processing they will undertake. PSONA will remain liable to the Customer for performance of the Sub-Processor's obligations.
- 11.7 PSONA will:
- 11.7.1 Process the Agreement Personal Data only on documented instructions from the Customer or the relevant member of its Group (unless PSONA or the relevant Sub-Processor is required to Process Agreement Personal Data to comply with applicable laws, in which case PSONA will notify the Customer of such legal requirement prior to such Processing unless such applicable laws prohibit notice to the Customer). For the purpose of this paragraph 11.7.1, the obligations on PSONA to perform the Services are documented instructions. Nothing in this paragraph 11.7.1 will permit the Customer to vary PSONA's obligations and/or any instructions under the Contract other than with PSONA's prior written agreement. Any requests by the Customer to vary PSONA's obligations and/or any instructions must be sent to ContractManagement@communisis.com;
- 11.7.2 without prejudice to Paragraphs 11.2.2 and 11.4, promptly inform the Customer upon becoming aware if, in its reasonable opinion, any instruction received from the Customer or a member of its Group infringes any Data Protection Laws;
- 11.7.3 ensure that any individual authorised to Process Agreement Personal Data is subject to confidentiality obligations or is under an appropriate statutory obligation of confidentiality;
- 11.7.4 at the option of the Customer, delete or return to the Customer all Agreement Personal Data after the end of the provision of Services relating to Processing, and delete any remaining copies. PSONA will be entitled to retain any Agreement Personal Data which:
- 11.7.4.1 it has to keep to comply with any applicable law;
- 11.7.4.2 it is required to retain for insurance, accounting, taxation, legal, regulatory or record keeping purposes;
- 11.7.4.3 is necessary to reproduce products, assess quality and investigate and resolve quality and performance issues.

This Paragraph 11 will continue to apply to retained Agreement Personal Data; and

11.7.5 notwithstanding any provision to the contrary in the Contract, be entitled to delete the Agreement Personal Data in accordance with its normal data cleansing policies.

11.8 PSONA will only make an International Transfer if:

11.8.1 the government of the United Kingdom or the European Commission (as applicable) makes a binding decision that the country or territory to which the International Transfer is to be made ensures an adequate level of protection for Processing of Personal Data;

11.8.2 PSONA or the relevant Sub-Processor provides adequate safeguards for that International Transfer in accordance with Data Protection Laws, in which case the Customer will execute any documents (including data transfer agreements) relating to that International Transfer which PSONA or the relevant Sub-Processor requires it to execute from time to time; or

11.8.3 PSONA or the relevant Sub-Processor is required to make the International Transfer to comply with applicable laws, in which case PSONA will notify the Customer of such legal requirement prior to such International Transfer unless such applicable laws prohibit notice to the Customer on public interest grounds.

PSONA will, upon request from the Customer, provide the Customer with details of the locations of International Transfers where Agreement Personal Data is transferred and the adequate safeguards it has in place in respect of such International Transfers.

11.9 PSONA will:

11.9.1 implement appropriate technical and organisational measures (i) as set out in the Contract; or (ii) where no specific security measures are set out, to ensure a level of security appropriate to the risk of the Processing undertaken by PSONA under the Contract;

11.9.2 notify the Customer without undue delay after becoming aware of a Data Security Incident;

11.9.3 be entitled not to carry out Processing of Agreement Personal Data and will not be in breach of the Contract or otherwise liable to the Customer or any member of its Group as a result of its failure to carry out such Processing if PSONA reasonably considers that the Processing of Agreement Personal Data may result in a Data Security Incident;

11.9.4 provide reasonable assistance to the Customer (at the Customer's cost) in:

11.9.4.1 complying with its obligations under the Data Protection Laws relating to the security of Processing Agreement Personal Data;

11.9.4.2 responding to requests for exercising Data Subjects' rights under the Data Protection Laws, including by appropriate technical and organisational measures, insofar as this is possible;

11.9.4.3 documenting any Data Security Incidents and reporting any Data Security Incidents to any Supervisory Authority and/or Data Subjects; and

11.9.4.4 conducting privacy impact assessments of any Processing operations and consulting with Supervisory Authorities, Data Subjects and their representatives accordingly.

11.10 PSONA will:

11.10.1 make available to the Customer all information necessary to demonstrate compliance with the obligations set out in this Paragraph 11; and

11.10.2 without prejudice to any audit provisions set out in the Contract, allow for and contribute to up to one audit per calendar year and any additional audits required in writing by the Information Commissioner's Office, including inspections, conducted by the Customer or another auditor mandated by the Customer, provided that the Customer gives PSONA at least 14 days' prior written notice of each such audit and that each audit is carried out at the Customer's cost, during PSONA's normal business hours, so as to cause the minimum disruption to PSONA's business and without the Customer or its auditor having any access to any data belonging to a person other than the Customer or members of its Group. Any materials disclosed during such audits and the results of and/or outputs from such audits will be kept confidential by the Customer and each member of its Group.

11.11 The Customer has sole responsibility for and shall ensure (and shall procure that each member of the Customer's Group ensures) that:

11.11.1 it has all necessary rights to authorise PSONA and its Sub-Processors to Process Agreement Personal Data in accordance with the Contract and the Data Protection Laws;

11.11.2 it has provided adequate fair processing notices to, and obtained all necessary consents from all Data Subjects to enable PSONA and its Sub-Processors to Process the Agreement Personal Data for the purposes of providing the Services and performing its obligations and exercising its rights as set out in the Contract in compliance with the Data Protection Laws and all guidance issued by the Information Commissioner's Office and any other supervisory authorities;

11.11.3 it shall provide PSONA with only Agreement Personal Data that is adequate, readable, relevant, limited to what is necessary for the lawful purposes for which they are processed, permissible under the Data Protection Laws and not corrupt, lost, damaged, degraded or otherwise unusable;

- 11.11.4 it will ensure that all Agreement Personal Data that it shares with or makes available to PSONA and/or any member of PSONA's Group is encrypted using AES-256 encryption or higher, password protected and otherwise subject to technical and organisational measures to ensure a level of security appropriate to the risk;
  - 11.11.5 it complies with information security management standards equivalent to ISO/IEC 27001 and, where payment card data will be processed by the Customer, PCI DSS;
  - 11.11.6 all Agreement Personal Data provided to PSONA is accurate and where necessary, kept up to date; and
  - 11.11.7 its instructions to PSONA relating to Processing of Agreement Personal Data will not breach, and will not put either party in breach of, Data Protection Laws.
- 11.12 The Customer will reimburse PSONA for all additional costs and liabilities incurred by PSONA resulting from any failure or delay(s) by the Customer to comply with its obligations under the Contract (including Paragraph 11.11).

## **12 CONFIDENTIALITY**

- 12.1 The Receiving Party will not during the Contract or at any time thereafter disclose any Confidential Information of the Disclosing Party to any person or use any such information, except for the sole purpose of the performance of the Contract or with the prior written consent of the Disclosing Party.
- 12.2 The restrictions in Paragraph 12.1 will not apply to: (a) the disclosure of information where required by law or order of regulatory authority or recognised stock exchange (provided that to the extent permitted by such law or order, the Receiving Party notifies the Disclosing Party of such requirement in advance); (b) information which is made public other than through a breach of the Contract; or (c) information in the Receiving Party's possession or provided to the Receiving Party without obligations of confidence.
- 12.3 The Receiving Party will treat and safeguard as private and confidential all Confidential Information of the Disclosing Party received by it and will take reasonable precautions (which will not be less rigorous than the precautions it takes to safeguard its own confidential information) in dealing with any such Confidential Information to prevent any third party from having access to it and will not take more copies of the Confidential Information than is necessary.
- 12.4 All Confidential Information (including all copies) will forthwith be returned to the Disclosing Party (or destroyed) upon receipt by the Receiving Party of a written notice to that effect from the Disclosing Party.

## **13 SANCTIONS**

- 13.1 The Customer warrants and undertakes that: it has complied with, and each is presently in compliance with, all Applicable Laws restricting or prohibiting transactions with, or the export, provision, purchase or sale of goods and/or services to, any person pursuant to any sanctions administered or enforced by the U.S. Government (including, without limitation, the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC") or the U.S. Department of State), the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority (collectively, the "Sanctions Authorities"); Neither the Customer nor any of its affiliates is a person named on the list of Specially Designated Nationals maintained by OFAC or is otherwise the target or subject of sanctions administered by any other Sanctions Authority (each such person, a "Sanctioned Person") and, to the knowledge of the Customer none of their respective directors, officers and employees is a Sanctioned Person, and is owned or controlled more than 50% by a sanctioned person.

## **14 TERMINATION**

- 14.1 Either party may terminate the Contract immediately, by giving notice in writing to the other party if the other party: (a) makes or proposes any voluntary arrangement with its creditors (within the meaning of insolvency legislation) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order, is wound up or goes into liquidation (other than for the purpose of a solvent amalgamation or reconstruction); or (b) has a receiver, administrative receiver, administrator or similar officer appointed over any of its property or assets, or documents are filed at court or any action taken in relation to the appointment of an administrator; or (c) ceases, or threatens to cease, to carry on business; or (d) is unable to pay its debts as they fall due; or (e) suffers the occurrence of an event equivalent or similar in effect to any of the above events in any other jurisdiction; or (f) commits a material breach of any of its obligations under the Contract and such failure is not remediable, or where such failure is remediable fails to remedy such failure within fourteen (14) days of written notice from the terminating party specifying the failure and requiring its remedy.
- 14.2 The termination of the Contract will be without prejudice to either party's rights then accrued and to any provision of the Contract which is expressly or by implication intended to survive such termination including Paragraphs 10 (Intellectual Property Rights), 11 (Data Protection and Privacy), 12 (Confidentiality) and 15 (Liability and Limitations).

## **15 LIABILITY AND LIMITATIONS**

### **THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS STANDARD TERM.**

- 15.1 PSONA does not limit or exclude its Liability (if any) to the Customer:
  - (a) for breach of its obligations arising under Section 12 Sale of Goods Act 1979 or Section 2 Supply of Goods and Services Act 1982;
  - (b) for personal injury or death resulting from its negligence;
  - (c) under Section 2(3) Consumer Protection Act 1987;
  - (d) for any matter which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability; or
  - (e) for fraud or fraudulent misrepresentation.
- 15.2 Subject to Paragraph 15.1 PSONA will be under no Liability to the Customer for any of the following:
  - (a) loss of profits
  - (b) depletion of goodwill, reputation or similar losses;
  - (c) loss or corruption of data or information; or
  - (d) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses in each case even if foreseeable by or in the contemplation of the parties.

- 15.3 Subject to Paragraphs 15.1 and 15.2, and notwithstanding any provision to the contrary in the Contract, PSONA shall have no Liability to the Customer and/or any member of the Customer's Group to the extent:
- (a) arising from or in connection with any failure by the Customer and/or any member of the Customer's Group to comply with Data Protection Laws;
  - (b) arising from or in connection with any failure by the Customer and/or any member of the Customer's Group to comply with the provisions of Paragraph 11 (Data Protection) of the Contract;
  - (c) arising from or in connection with PSONA complying with any written instructions from the Customer and/or any member of the Customer's Group; and
  - (d) that any costs, claims, demands, expenses and liabilities result from or are aggravated by the Customer's and/or any member of the Customer's Group's failure to comply with Data Protection Laws and/or the Contract.
- 15.4 The Customer acknowledges that a failure by the Customer to comply with Paragraph 11 and/or the Data Protection Laws could result in losses, liabilities, costs, damages, claims, proceedings and/or expenses being suffered by (i) PSONA; (ii) members of PSONA's Group; and/or (iii) its Sub-Processors.
- 15.5 Subject to Paragraph 15.1, PSONA's Liability arising out of or in connection with any failure by PSONA to comply with its obligations under Paragraph 11 (Data Protection) of the Contract and/or any Data Protection Laws, will be limited to the lesser of:
- (i) 200% of the Fees paid and/or payable to PSONA by the Customer under the Contract; and
  - (ii) £1 million (one million pounds sterling).
- 15.6 Subject to Paragraphs 15.1 and 15.5, PSONA's aggregate liability whether in contract, tort, misrepresentation, restitution, under statute or otherwise, in each case howsoever caused including if caused by negligence and arising out of or in connection with all failures by PSONA to comply with its obligations under any Data Protection Laws which occur in any calendar year will be limited to the lesser of:
- (i) 200% of the fees paid and/ or payable to PSONA by the Customer under all Contracts in the relevant calendar year; and
  - (ii) £1 million (one million pounds sterling).
- 4.2 Subject to Paragraph 15.1 and except in respect of any liability to which Paragraph 15.5 or 15.6 applies, PSONA Liability will be limited to the amount of the Fees paid/ and or payable by the Customer under the Contract.
- 4.3 Subject to Paragraph 15.1, PSONA excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.
- 4.4 Each party shall take all reasonable steps to mitigate its loss.
- 4.5 This Paragraph 15 shall survive termination of the Contract.

## **16 GENERAL**

- 16.1 PSONA will not be deemed to be in breach of the Contract or otherwise liable to the Customer in any manner whatsoever for any failure or delay in performing its obligations under the Contract due to Force Majeure.
- 16.2 PSONA may sub-contract and/or assign any part of its obligations under the Contract without the Customer's prior written approval and may provide such subcontractors and/or assignees with access to any Data or to the Database, Customer Materials and any Customer Confidential Information. The Customer shall not be entitled to assign the Contract or any part of it without the prior written approval of PSONA.
- 16.3 Any notice will be in writing to the recipient at its registered office or its address stated in the Scope of Work (or such other address as may be notified in writing from time to time) and will be marked for the attention of the party's Company Secretary.
- 16.4 Any notice will be deemed to have been duly served: (a) if delivered by hand, when left at the proper address for service (except that where such delivery is not on a Business Day service will be deemed to occur on the next Business Day); or (b) if given or made by prepaid first class post, two Business Days after being posted.
- 16.5 The parties are independent contractors and not joint venturers, partners or agents of each other and neither party will have any authority to act on behalf of the other.
- 16.6 If any term of the Contract to any extent is held to be invalid, void or unenforceable, then that term or provision will be inoperative and void to the extent necessary to comply with law, but the remaining terms will nevertheless continue in full force and effect and the rights and obligations of the parties will be construed as if the Contract did not contain that particular term held to be invalid, void or unenforceable.
- 16.7 The Contract will be governed and construed in all respects in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.
- 16.8 A person who is not a party to the Contract will have no right to enforce any of its terms.
- 16.9 No failure or delay by PSONA to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

### Data Processing Annex

<b>Subject matter of Processing</b>	[DETAILS]
<b>Duration of Processing</b>	[DETAILS]
<b>Nature of Processing</b>	[DETAILS]
<b>Purpose of Processing</b>	[DETAILS]
<b>Type of Personal Data</b>	[DETAILS]
<b>Categories of Data Subject</b>	[DETAILS]