

# Data services terms and conditions

## PARTIES

(1) ORE Catapult Development Services Limited incorporated and registered in England and Wales with company number 5636283 whose registered office is at Offshore House, Albert Street, Blyth, Northumberland, NE24 1LZ **(Supplier)**

(2) The Party downloading and making use of Supplier Data from the POD Website (as hereinafter defined) **(Customer)**

## BACKGROUND

(A) The Supplier owns the copyright and any database rights in the Supplier Data (as defined below).

(B) The Supplier has agreed to provide the Services (as defined below) on the terms set out in this agreement using the POD Website.

(C) As part of the Services, the Supplier has agreed to license to the Customer the use of all copyright and database rights in the Supplier Data (as defined below) on the basis of these terms and conditions. By ticking the box on the POD Website, the Customer is indicating that it has read, understood and agrees to be bound by these terms and conditions in respect of any Services provided. These terms and conditions together with the confirmation of the Commencement Date, the Charges and any other details relevant to the Services shall together form the contractual agreement between the Parties for provision of the Services (the **"Agreement"**).

## AGREED TERMS

### 1. INTERPRETATION

#### 1.1

The definitions and rules of interpretation in this clause apply in this Agreement and in any other agreement between the parties.

**Agreed Purpose:** means a purpose notified by the Customer to the Supplier under clause 2.2 where following that notification, the Supplier has agreed to provide Supplier Data to the Customer.

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

**Charges:** the charges specified in Part 3 of Schedule 1.

**Commencement Date:** the date specified in Part 1 of Schedule 1.

**Confidential Information:** all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or sub-contractors involved in the provision or receipt of the Services who need to know the confidential information in question (**Representatives**) to the other party and that party's Representatives in connection with this Agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure.

**Customer System:** any information technology system or systems owned or operated by the Customer from which Data is received in accordance with this Agreement.

**Customer User:** any employee, subcontractor or other personnel of the Customer authorised by the Customer to access and use the Services (wholly or in part).

**Customer User Restrictions:** the obligations set out in Annex 2.

**Data Protection Requirements:** the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003), the General Data Protection Regulation (2016/679/EC) and the Data Protection Act 2018 all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, and the equivalent of any of the foregoing in any relevant jurisdiction.

**Derived Data:** any Data (wholly or in part) Manipulated to such a degree that it:

(a) cannot be identified as originating or deriving directly from the Data or the Services and cannot be reverse-engineered such that it can be so identified; and

(b) is not capable of use substantially as a substitute for the Data or the Services.

**Distribute:** to make Data accessible (including the provision of access through a database or other application populated with the Data, re-selling, sub-licensing, transferring or disclosing the Data) by any means, including any electronic means, to any Customer User within the Site.

**Good Industry Practice:** in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgement and the making of any expenditure that would reasonably be expected from a skilled person engaged in the same type of undertaking under the same or similar circumstances.

**holding company and subsidiary:** mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

**Initial Period:** a period of 12 months commencing on the Commencement Date.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, semi-conductor topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Licence:** the licence granted in Clause 12.

**Manipulate:** to combine or aggregate the Data (wholly or in part) with other data or information or to adapt the Data (wholly or in part).

**Manipulated Data:** any Data which has been Manipulated. Manipulated Data includes any Derived Data.

**Materials:** any documents supplied by the Supplier under this Agreement, including the materials referred to in Clause 8.4.

**Normal Business Hours:** 8.30 am to 6.00 pm GMT on a Business Day.

**Permitted Use:** internal business use (which shall not include the use of the Data or the Materials by, or for the benefit of, any person other than an employee of the Customer).

**POD Website:** means the website through which the Services will be provided by the Supplier to the Customer, to which this Agreement is linked.

**Renewal Period:** each successive 12-month period after the Initial Period for which this Agreement is renewed.

**Security Feature:** any security feature including any key, PIN, password, token or smartcard.

**Services:** the services to be supplied by the Supplier under this Agreement as described in Part 4 of Annex 1 including the supply of any Data, Materials.

**Supplier Data:** the data or information, in whatever form including but not limited to text, images, still and moving, and sound recordings, the provision of which comprises the Services (wholly or in part).

**Term:** the Initial Period and any Renewal Periods.

## 1.2

Data subject, personal data, processing and appropriate technical and organisational measures shall bear the meanings given to those terms respectively in (i) initially, the Data Protection Act 1998; and (ii) the General Data Protection Regulation (2016/679/EC)

## 1.3

Clause, annex and paragraph headings shall not affect the interpretation of this Agreement.

## 1.4

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

## 1.5

The annexes form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the annexes .

**1.6**

A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

**1.7**

Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

**1.8**

Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

**1.9**

A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

**1.10**

A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

**1.11**

A reference to **writing** or **written** includes faxes but not e-mail.

**1.12**

References to clauses and annexes are to the clauses and annexes of this Agreement and references to paragraphs are to paragraphs of the relevant annexes.

**1.13**

Any words following the terms **including**, **include**, **in particular** or **for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.

**1.14**

If there is any uncertainty between:

**(a)** any provision contained in the body of this Agreement and any provision contained in the annexes, the provision in the body of this Agreement shall prevail;

**(b)** the terms of any accompanying invoice or other documents annexed to this Agreement and any provision contained in the annexes, the provision contained in the annexes shall prevail; and

## **2. DUE DILIGENCE AND SCOPE**

### **2.1**

Subject to clause 2.2, during the Term the Supplier shall supply the Services to the Customer and the Customer shall pay the Charges and use the Services.

### **2.2**

The Supplier shall be under no obligation supply the Services to the Customer until such time as (i) the Customer has provided any information requested by the Supplier from the Customer has been provided; and (ii) the Supplier has carried out such checks as are appropriate in relation to the Customer. The Supplier may request from the Customer information which shall include but not be limited to: the Customer's corporate group and relevant associated companies; and the purposes for which the Supplier Data is to be used. Should the Supplier decide that it is not appropriate to provide Supplier Data to the Customer, it will notify the Customer of this as soon as reasonably practicable. The provisions of clause 17.3 will then apply.

### **2.3**

Should the Customer wish to use the Supplier Data for any purposes other than the Agreed Purposes, it shall, prior to any such use, submit a written request to this effect to the Supplier. The Supplier shall respond to any such request within 28 days of its receipt of same. Should that request be approved by the Supplier (acting reasonably), the requested purpose will be deemed to be an Agreed Purpose.

## **3. CONNECTION**

### **3.1**

The Supplier shall use reasonable efforts to make connection to the Services available on the Commencement Date.

### **3.2**

The Customer shall ensure that it promptly complies with any minimum hardware configuration requirements specified by the Supplier for the purpose of establishing connectivity between the Customer System and the Services.

### **3.3**

Each party shall bear its own costs of establishing that connectivity.

### **3.4**

The Supplier shall promptly supply any Releases to the Customer and the Customer shall promptly install them and ensure that the Licence is exercised only once any current Release has been installed.

## **4. SERVICES**

### **4.1**

During the Term the Supplier shall supply the Services to the Customer.

### **4.2**

The Supplier may change at any time, with as much prior notice to the Customer as is reasonably practicable:

- (a)** the content, format or nature of Supplier Data or the Services; and
- (b)** the means of access to the Supplier Data or the Services.

## **5. CHARGES**

### **5.1**

For the performance of the Services, the Customer shall pay to the Supplier the Charges.

### **5.2**

The Charges shall be due and payable in full to the Supplier in advance of the provision of the Services.

### **5.3**

Time shall be of the essence regarding the Customer's obligations to make payments in accordance with this Clause 5 and such obligations are material obligations for the purpose of Clause 17.3(b).

#### 5.4

All Charges are exclusive of VAT or any other applicable sales tax, which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.

#### 5.8

The Customer may terminate the relevant Service from the date on which that variation is intended to take effect, provided that the Customer gives the Supplier written notice of termination of that Service within 60 days of the date of the Supplier's notice, in the following circumstances:

(a) where the Supplier's notice of variation concerns the Charges or the basis on which they are calculated and that variation results in an increase in the Charges greater than that of the Retail Price Index (All Items) calculated by the Office for National Statistics for the period from the Commencement Date (in the case of the first increase) or the date on which the immediately preceding increase came into effect under this Clause 5 (in the case of the second or any subsequent increase) up to the date of the notice of variation, plus 5%; and

(b) the Customer can show that the variation in question will result in a material reduction in the rights granted under Clause 12.1 in respect of the Services or the relevant Service,

in which case, the Customer shall be entitled to a refund of any Charges already paid for the Services or that Service (as the case may be) in respect of any period following termination under this clause.

#### 5.9

Where an amendment to the provisions of this Agreement (other than the Charges or the basis on which they are calculated) is required as a result of an addition to the Services or relevant Service (including, for example, an amendment to acknowledge third party rights), the Supplier may give the Customer reasonable notice in writing of the necessary amendments that will take effect on the date specified in that notice.

### 6. AUDIT

#### 6.1

The Customer shall keep, in paper and electronic form, at its normal place of business detailed, accurate and up-to-date records (**Records**) showing, during the previous three years the steps taken by the Customer to comply with the Customer User Restrictions. The Customer shall ensure that the Records are sufficient to enable the Supplier to verify the Customer's compliance with its obligations under this Clause 6.

#### 6.2

The Customer shall permit the Supplier and its third party representatives, on reasonable notice during Normal Business

Hours[, but without notice in case of any reasonably suspected breach of this Clause 6], to:

- (a) gain (physical and remote electronic) access to, and take copies of, the Records and any other information held at the Customer's premises or on the Customer System; and
- (b) inspect all Records and Customer Systems relating to the use, Distribution, Redistribution, permissioning and control of the Supplier Data and the Services,

for the purpose of and the Customer's compliance with its obligations under this Agreement including the Customer User Restrictions. Such audit rights shall continue for six years after termination of this Agreement. The Customer shall give all necessary assistance to the conduct of such audits during the term of this Agreement and for a period of six years after termination of this Agreement.

## 7. UNAUTHORISED USE

If any unauthorised use is made of the Supplier Data or Materials and such use is attributable to the act or default of, or through, the Customer (including breach of any Customer User Requirements) then, without prejudice to the Supplier's other rights and remedies, the Customer shall immediately be liable to pay the Supplier an amount equal to the Charges that the Supplier would have charged, had the Supplier or the Customer (as the case may be) authorised the unauthorised [user **OR** Site] at the beginning of the period of that unauthorised use together with interest at the rate provided for in Clause 5.4 from the date of that unauthorised use to the date of payment.

## 8. CONFIDENTIALITY

### 8.1

The term Confidential Information does not include any information that:

- (a) 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 8);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) 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;
- (d) was known to the receiving party before the information was disclosed to it by the disclosing party; or
- (e) the parties agree in writing is not confidential or may be disclosed.

## 8.2

Each party shall keep the other party's Confidential Information confidential and shall not:

(a) use any Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement (Permitted Purpose); or

(b) disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.

## 8.3

A party may disclose the other party's Confidential Information to those of its Representatives who need to know that Confidential Information for the Permitted Purpose, provided that:

(a) it informs those Representatives of the confidential nature of the Confidential Information before disclosure; and

(b) at all times, it is responsible for the Representatives' compliance with the confidentiality obligations set out in this Clause 8.

## 8.4

The Customer acknowledges that the Supplier's Confidential Information includes any software or other materials created by the Supplier in connection with the Services.

## 8.5

A party may disclose Confidential Information to the extent required 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 the disclosure as possible.

## 8.6

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 Agreement, are granted to the other party, or are to be implied from this Agreement.

## 8.7

The provisions of this Clause 8 shall continue to apply after termination of this Agreement.

## **9. ANNOUNCEMENTS**

No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.

## **10. SECURITY AND PASSWORDS**

### **10.1**

The Customer shall ensure that the Data and Materials are kept secure by using the Security Features and in an encrypted form, and shall use the best available security practices and systems applicable to the use of the Data and Materials to prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Data and the Materials.

### **10.2**

Where the Supplier uses Security Features in relation to the Services (wholly or in part), the Security Features must, unless the Supplier notifies the Customer otherwise, be kept confidential and not lent, shared, transferred or otherwise misused.

### **10.3**

If the Customer becomes aware of any misuse of any Data or the Materials, or any security breach in connection with this Agreement that could compromise the security or integrity of the Data or the Materials or otherwise adversely affect the Supplier or if the Customer learns or suspects that any Security Feature has been revealed to or obtained by any unauthorised person, the Customer shall, at the Customer's expense, promptly notify the Supplier and fully co-operate with the Supplier to remedy the issue as soon as reasonably practicable.

### **10.4**

The Customer agrees to co-operate with the Supplier's reasonable security investigations.

**10.5** The Supplier may change Security Features on notice to the Customer or the Customer Users for security reasons.

## **11. DATA PROTECTION**

### **11.1**

The Customer warrants that:

**(a)** all relevant data subjects whose personal data it has supplied to the Supplier in connection with this Agreement (Customer Personal Data), have given their informed consent for the Supplier to:

**(i)** process the Customer Personal Data for the Permitted Purpose;

**(ii)** transfer the Customer Personal Data to destinations outside the European Economic Area (EEA) which may have lower standards of data protection than those applicable in the EEA;

**(iii)** disclose any Customer Personal Data in response to any subject access request relating to this Agreement; and

**(iv)** retain the Customer Personal Data for as long as is necessary for the Permitted Purpose; and

**(b)** it is registered with all relevant data protection authorities to process all Customer Personal Data for the Permitted Purpose.

## **11.2**

The Customer shall indemnify the Supplier for any cost, claim or expense arising as a result of the Customer:

**(a)** breaching any of the Data Protection Requirements; or

**(b)** causing the Supplier to be in breach of any of the Data Protection Requirements.

## **12. LICENCE**

### **12.1**

The Supplier grants to the Customer a non-exclusive, non-transferable, revocable, licence for the Permitted Use only during the Term, subject to the Customer User Restrictions, to:

**(a)** access, view and Manipulate Data and create Derived Data;

**(b)** store the Supplier Data and Manipulated Data on the Customer System;

**(c)** Distribute the Supplier Data and Manipulated Data to Customer Users on the Customer System within the Site; and

**(d)** use (but not modify) the Materials in support of the activities referred to in this Clause 12.1.

## **12.2**

Except as expressly provided in this Agreement, the Customer shall not:

- (a)** use the Services (wholly or in part) in its products or services save where such use is an Agreed Purpose;
- (b)** redistribute the Services (wholly or in part); or
- (c)** in the case of an academic or research organisation receiving any Services under this Agreement, publish any materials containing any reference to Derived Data or Manipulated Data without obtaining the Supplier's explicit prior written consent.

## **12.3**

The Customer shall observe the Customer User Restrictions.

## **13. INTELLECTUAL PROPERTY RIGHTS OWNERSHIP**

### **13.1**

The Customer acknowledges that:

- (a)** all Intellectual Property Rights in the Supplier Data and the Materials are the property of the Supplier or its licensors, as the case may be;
- (b)** it shall have no rights in or to the Supplier Data or the Materials other than the right to use them in accordance with the express terms of this Agreement; and
- (c)** the Supplier or its licensors has or have made and will continue to make substantial investment in the obtaining, verification, selection, coordination, development, presentation and supply of the Supplier Data.

### **13.2**

The Customer assigns to the Supplier and shall grant to the Supplier a licence to use any development of the Materials and any Manipulated Data it may create for internal research and development purposes. Pursuant to this clause 13.2, the Customer shall provide copies of Manipulated Data to the Supplier

### **13.3**

The Customer shall, and shall use all reasonable endeavours to procure that any necessary third party shall, at the Supplier's cost, promptly execute such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

#### **13.4**

Save where same is an Agreed Purpose, the Customer shall not commercialise any Manipulated Data or use same in any products or services without the prior written agreement of the Supplier (including, where appropriate, agreement of appropriate and reasonable commercial terms).

#### **13.5**

The Customer shall co-operate with the Supplier to protect the goodwill and reputation of the Services and, without limitation, shall comply with Paragraph 1.2 of Schedule 2.

#### **13.6**

Any display of the Services by the Customer shall credit, wherever technically and commercially feasible, the Supplier, any licensor of the Supplier or any other source of the Supplier Data specified by the Supplier as the source of the Supplier Data.

#### **13.7**

The Customer acknowledges that reference in any element of the Materials to trade names or proprietary products where no specific acknowledgement of such names or products is made does not imply that such names or products may be regarded by the Customer as free for general use, outside the scope of the use of the Materials authorised by this Agreement.

### **14. INTELLECTUAL PROPERTY RIGHTS OBLIGATION**

#### **14.1**

The Supplier undertakes to defend the Customer from and against any claim or action that the provision, receipt or use of the Data or Materials (wholly or in part) infringes any UK Intellectual Property Right of a third party (IPR Claim) and shall be responsible for any losses, damages, costs (including all legal fees) and expenses incurred by or awarded against the Customer as a result of, or in connection with, any such IPR Claim, provided that, if any third party makes an IPR Claim, or notifies an intention to make an IPR Claim against the Customer, the Customer shall:

- (a)** give written notice of the IPR Claim to the Supplier as soon as reasonably practicable;
- (b)** not make any admission of liability in relation to the IPR Claim without the prior written consent of the Supplier;
- (c)** at the Supplier's request and expense, allow the Supplier to conduct the defence of the IPR Claim including settlement; and
- (d)** at the Supplier's expense, co-operate and assist to a reasonable extent with the Supplier's defence of the IPR Claim.

#### **14.2**

Clause 14.1 shall not apply where the IPR Claim in question is attributable to:

- (a) possession, use, development, modification or retention of the Data or Materials (wholly or in part) by the Customer other than in accordance with this Agreement, provided that the obligations in Clause 14.1 shall not apply to the extent that the relevant Claim was attributable to the use of any Manipulated Data;
- (b) the Customer's failure to provide a suitable environment for connecting the Customer System to the Services in breach of Clause 3.2;
- (c) use of the Supplier Data or the Materials (wholly or in part) in combination with any hardware or software not supplied or specified by the Supplier to the extent that the infringement would have been avoided by the use of the Supplier Data or the Materials (wholly or in part) not so combined;
- (d) use of the Supplier Data (wholly or in part) in combination with any data not supplied or specified by the Supplier to the extent that the infringement would have been avoided by the use of the Supplier Data (wholly or in part) not so combined;  
or
- (e) use of a non-current Release to the extent that the infringement would have been avoided by the use of the current Release.

### 14.3

If any IPR Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier may at its sole option and expense:

- (a) procure for the Customer the right to continue using, developing, modifying or retaining the Supplier Data or the Materials (wholly or in part) in accordance with this Agreement;
- (b) modify the Supplier Data or the Materials (wholly or in part) so that they cease to be infringing;
- (c) replace the Supplier Data or the Materials (wholly or in part) with non-infringing items; or
- (d) terminate this Agreement immediately by notice in writing to the Customer and refund any Charges for the relevant Accounting Period paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Supplier Data or Materials to the date of termination) on return of the Supplier Data or the Materials and all copies of each of them.

### 14.4

This Clause 14 constitutes the Customer's sole and exclusive remedy and the Supplier's only liability in respect of Claims and, for the avoidance of doubt, is subject to Clause 16.4.

## **15. WARRANTIES**

### **15.1**

The Supplier warrants that it has the right to license the receipt and use of Data and Materials as specified in this Agreement.

### **15.2**

Except as expressly stated in this Agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

### **15.3**

Without limiting the effect of Clause 15.2, the Supplier does not warrant that:

- (a)** the Services will run on the Customer System;
- (b)** the Supplier Data is accurate, complete, reliable, secure, useful, fit for purpose or timely; or
- (c)** the Supplier Data has been tested for use by the Customer or any third party or that the Supplier Data will be suitable for or be capable of being used by the Customer or any third party.

## **16. LIMITATION OF LIABILITY**

### **16.1**

Neither party excludes or limits liability to the other party for:

- (a)** fraud or fraudulent misrepresentation;
- (b)** death or personal injury caused by negligence;
- (c)** a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d)** any matter in respect of which it would be unlawful for the parties to exclude liability.

## 16.2

Subject to Clause 16.1, the Supplier shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

- (a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
- (b) any loss or corruption (whether direct or indirect) of data or information;
- (c) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
- (d) any loss or liability (whether direct or indirect) under or in relation to any other contract.

## 16.3

Clause 16.2 shall not prevent claims, which fall within the scope of Clause 16.4, for:

- (a) direct financial loss that are not excluded under any of the categories set out in Clause 16.2(a) to Clause 16.2(d); or
- (b) tangible property or physical damage.

## 16.4

Subject to Clause 16.1, the Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or any collateral contract shall in all circumstances be limited to the greater of:

- (a) £50,000; and
- (b) 100% of the total Charges paid by the Customer to the Supplier during the 12-month period immediately before the date on which the cause of action first arose or, if the cause of actions arose during the Initial Period, in respect of the Initial Period.

## 16.5

Any dates quoted for delivery of the Services are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Services that is caused by an event within the scope of Clause 18 or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Services or the Customer's failure to comply with Clause 3.2.

## **17. TERM AND TERMINATION**

### **17.1**

This Agreement shall commence on the Commencement Date. Unless terminated earlier in accordance with Clause 17.2, Clause 17.3 or this Clause 17.1, this agreement shall continue for the Initial Period and shall automatically extend for a Renewal Period at the end of the Initial Period and at the end of each Renewal Period. Either party may give written notice to the other party, not later than 60 days before the end of the Initial Period or the relevant Renewal Period, to terminate this Agreement at the end of the Initial Period or the relevant Renewal Period, as the case may be.

### **17.2**

The Customer may terminate this Agreement in respect of the Services (wholly or in part) in accordance with Clause 5.8.

### **17.3**

The Supplier may terminate this Agreement in respect of the Services (wholly or in part) if: (i) prior to providing Supplier Data, it becomes aware or develops reasonable basis to suspect that the Customer is not an appropriate person to be in receipt of Supplier Data; or (ii) having provided Supplier Data, it becomes aware or develops reasonable basis to suspect that the Customer has provided inaccurate or incomplete information in response to the request for information under clause 2.2 .

### **17.4**

Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- (a)** the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make that payment;
- (b)** the other party commits a material breach of any material term of this Agreement (other than failure to pay any amounts due under this Agreement) and (if that breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c)** the other party:
  - (i)** suspends, or threatens to suspend, payment of its debts;
  - (ii)** is unable to pay its debts as they fall due or admits inability to pay its debts;
  - (iii)** (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

**(iv)** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or

**(v)** (being a partnership) has any partner to whom any of Clause 17.3(c)(i) to Clause 17.3(c)(iv) apply;

**(d)** the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (in the case of a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

**(e)** a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

**(f)** an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);

**(g)** the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

**(h)** a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

**(i)** a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other similar process is levied or enforced on or sued against, the whole or any part of the other party's assets and that attachment or process is not discharged within 14 days;

**(j)** any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 17.3(c) to Clause 17.3(i) (inclusive);

**(k)** the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

**(l)** there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

## **17.5**

Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.

## **17.6**

Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

#### **17.7**

On any termination of this Agreement for any reason or expiry of the Term, the Customer shall immediately pay any outstanding amounts owed to the Supplier under this Agreement and, within a reasonable period of termination or expiry ensure that there is no further use of the Services in any of the Customer's products or applications.

#### **17.8**

On any termination of this Agreement for any reason or expiry of the Term:

**(a)** each party shall as soon as reasonably practicable return or destroy (as directed in writing by the other party) all data, information, software, and other materials provided to it by the other party in connection with this Agreement including all materials containing or based on the other party's Confidential Information , except for one copy that it may use for audit purposes only, and subject to the confidentiality obligations in Clause 8; and

**(b)** without limiting the effect of Clause 17.7(a), the Customer shall as soon as reasonably practicable ensure that all Supplier Data and Manipulated Data (excluding any Derived Data) is deleted from the Customer System.

#### **17.8**

On any termination of this Agreement for any reason or expiry of the Term, the Supplier shall refund any Charges for the relevant Accounting Period paid by the Customer as at the date of termination or expiry (less a reasonable sum in respect of the Customer's use of the Data or the Materials to the date of termination), except where the ground for termination is material breach by the Customer under Clause 17.3(b), in which case the Customer shall not be entitled to any refund.

#### **17.9**

Each party shall provide written confirmation (in the form of a letter signed by a statutory director) of compliance with Clause 17.7(a) and also, in the case of the Customer only, Clause 17.7(b) no later than 14 days after termination of this Agreement.

#### **17.10**

If a party is required by any law, regulation, or government or regulatory body to retain any documents or materials that it would otherwise be required to return or destroy under Clause 17.7, it shall notify the other party in writing of that retention, giving details of the documents or materials that it must retain. That party shall not be in breach of *Clause 17.7* with respect to the retained documents or materials, but Clause 8 shall continue to apply to them.

### **18. FORCE MAJEURE**

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 6 months, the party not affected may terminate this Agreement by giving 30 days' written notice to the affected party.

## **19. ASSIGNMENT**

### **19.1**

This Agreement is personal to the Customer and it shall not assign, transfer, mortgage, charge, sub-contract, declare a trust of or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the Supplier (which is not to be unreasonably withheld or delayed).

### **19.2**

The Customer confirms it is acting on its own behalf and not for the benefit of any other person.

### **19.3**

The Supplier may at any time assign, transfer, mortgage, charge, sub-contract, declare a trust of or deal in any other manner with any of its rights and obligations under this Agreement without the consent of the Customer.

## **20. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## **21. REMEDIES**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **22. NOTICE**

### **22.1**

Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:

- (a) delivered by hand or by 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) sent by fax to its main fax number.

### **22.2**

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].
- (c) if sent by fax, at 9.00 am on the next Business Day after transmission.

### **22.3**

This clause 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. For the purposes of this clause, "writing" shall not include e-mail.

## **23. ENTIRE AGREEMENT**

### **23.1**

This Agreement constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

### **23.2**

Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.

### **23.3**

Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

## **24. VARIATION**

Except as expressly provided in this Agreement, no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **25. SEVERANCE**

### **25.1**

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

### **25.2**

If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **26. NO PARTNERSHIP OR AGENCY**

### **26.1**

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

### **26.2**

Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **27. THIRD-PARTY RIGHTS**

### **27.1**

A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

**27.2** The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

## **28. GOVERNING LAW**

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

## **29. JURISDICTION**

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 this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on the date stated at the beginning of it.

## **SCHEDULE 1 KEY DETAILS**

### **PART 1**

**Commencement Date** – the date on which the Supplier Data is made available for download to the Customer’s System

### **PART 2**

#### **Charges and Reporting**

##### **1.**

**1.1** The Charges shall be calculated in advance on the basis of the Services being provided via the POD Website. These shall normally be indicated on the POD Website when the Customer specifies which Supplier Data and which Services it wishes to receive. Where the Charges are not so indicated, these will be confirmed by the Supplier to the Customer as soon as reasonably practicable thereafter.

### **PART 3**

#### **Services**

Provision by the Supplier to the Customer of the Supplier Data based on the specified requests made by the Customer to the Supplier using the POD Website.

## **SCHEDULE 2**

### **CUSTOMER USER RESTRICTIONS**

#### **PART 1**

##### **Customer User Restrictions**

#### **1. CUSTOMER USER RESTRICTIONS**

**1.1** The Customer shall:

- (a)** limit access to the Services to the Customer Users and for use in connection with the Agreed Purpose(s);
- (b)** only make copies of the Data and the Materials to the extent reasonably necessary for the Agreed Purpose;
- (c)** not use the Services for any purpose contrary to any law or regulation or any regulatory code, guidance or request;
- (d)** not extract, reutilise, use, exploit, redistribute, disseminate, copy or store the Data or the Materials for any purpose not expressly permitted by this Agreement; and
- (e)** not do anything which may damage the reputation of the Supplier, the Data or the Services, including by way of using the Data (wholly or in part) in any manner which is pornographic, racist or that incites religious hatred or violence.