



# General Terms for the provision of Data Transfer Software and IT Support Services

(1) Supplier

and

(2) Customer

**Pro2col Ltd**

Managed File Transfer Specialists

Devonshire Suite, Saxon Centre, Christchurch. BH23 1PZ

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Company Registration No. 5038052 | VAT No. 831 2965 29

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THIS AGREEMENT is made on

(the **Commencement Date**)

## **PARTIES**

- (1) **Pro2col Limited** a company incorporated in *England and Wales* under number 05038052 whose registered office is at Devonshire Suite, Saxon Centre, Christchurch, BH23 1PZ (**Supplier**); and
- (2) [*insert name of customer*] [of OR a company incorporated in [*England and Wales*] under number [*insert registered number*] whose registered office is at] [*insert address*] (**Customer**) (each of the **Supplier** and the **Customer** being a party and together the **Supplier** and the **Customer** are the parties).

## **BACKGROUND**

- A The Customer has selected the Supplier to provide data transfer and Supplier Software, products and associated IT support services to support its business operation which include some or all of the following:
- (a) A subscription for the use of 'Third-Party Software' Supplier Software;
  - (b) An end-user licence for the use of the Supplier Hosted Software, 'On-premises Software' or 'Customer Hosted Software'
  - (c) An end-user licence for the use of 'Third-Party Software' or 'Supplier Software and API Tools';
  - (d) Support Services;
  - (e) Third Party Vendor Support Services;
  - (f) Installation Services;
  - (g) Training Services;
  - (h) Software Health Check Services; and.
  - (i) Professional Services related to the supply, installation and configuration, use, maintenance or operational requirements of the Software;
- B The Supplier is a provider of data transfer and Supplier Software and API Tools, products and associated IT services, together with associated support, training, and ancillary services and agrees to provide its services on the agreed terms.

THE PARTIES AGREE:

## 1 Definitions

- (A) **Business Day** means a day other than a Saturday, Sunday or bank or public holiday in England;
- (B) **Confidential Information** means any and all confidential information, (whether in oral, written or electronic form) including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, Intellectual Property Rights, assets, strategy, products and customers, including without limitation information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm or organisation associated with that party;
- (C) **Control** means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **Controls** and **Controlled** shall be interpreted accordingly;
- (D) **Customer Data** means all data, information, and other materials in any form (including derivatives) relating to the Customer (and/or its customers) and which may be accessed, generated, collected, stored or transmitted by the Supplier (or any

- Supplier contractor) in the course of the performance of the Services;
- (E) **Customer Materials** means any Customer Software, Customer Data, project plans, workflow specifications, RFP/ bid documentation calculations, algorithms, methods, information and other materials created or supplied by the Customer;
- (F) **Customer Responsibilities** means any obligation of the Customer under this Agreement, including those in clause 6 and Schedule 3 (Customer Responsibilities);
- (G) **Customer Software** means all computer programs and applications and related materials owned, licensed or used by the Customer in relation to the Services (excluding Supplier Software and API Tools and Third Party Software);
- (H) **Customer Hosted Software** means software licenced to the Customer by the Supplier or a third party under a separate software licence agreement which has been installed and is operating (or is to be installed and operational) on a Customer owned cloud based or remotely hosted solution procured independently by the Customer.
- (I) **Deliverables** means all user manuals, systems or deliverables that the Supplier produces for the Customer as part of the Services;
- (J) **Exit Fees** means those fees specified in Schedule 4 payable by the Customer in relation to

- the provision of exit services by the Supplier;
- (K) **Fees** means the fees and other amounts payable under this Agreement including those set out in Schedule 4 (Fees);
- (L) **Supplier Software and API Tools** means all computer applications, application programming interface codes, scripts and tools and related materials owned, licensed or used by the Supplier in providing the Services (excluding Customer Software and Third-Party Software);
- (M) **Force Majeure** means an event or sequence of events beyond a party's reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations under this Agreement other than the Customer's obligation to pay amounts due under this Agreement;
- (N) **Installation Services** means the services provided by the Supplier in respect of installing the Software or configuring the software to work with existing Customer IT systems.
- (O) **Intellectual Property Rights** means copyright, patents, rights in inventions, rights in confidential information, Know-how, trade secrets, trade marks, service marks, trade names, design rights, rights in get-up, database rights, rights in data, semi-conductor chip topography rights, mask works,

utility models, domain names, rights in computer software and all similar rights of whatever nature and, in each case: (i) whether registered or not, (ii) including any applications to protect or register such rights, (iii) including all renewals and extensions of such rights or applications, (iv) whether vested, contingent or future and (v) wherever existing;

- (P) On Premises Software** means software licenced to the Customer by the Supplier under a separate software licence agreement which has been installed and is operating (or is to be installed and operational) on a Customer Server located at Customer premises and is not to be provided as a cloud based or remotely hosted solution.
- (Q) Professional Services** Professional Services related to the supply, installation and configuration, use, maintenance or operational requirements of the Software;
- (R) Proof of Concept** An evaluation copy of proposed solution provided by the Supplier and available for a determined period of time – used for demonstration and testing purposes;
- (S) Proposal** the fee proposal set out in Schedule 4, or, in the absence of a fee proposal in the quotation accepted by the Customer;



- (T) **Service Hours** means the hours during which the Supplier performs the Services, as set out in Schedule 1 (Services);
- (U) **Service Levels** means the service levels specified in Schedule 2 (Service Levels);
- (V) **Service Location** means the location where the Services are performed, which shall be remotely at such location as determined from time to time by the Supplier unless otherwise specified in Schedule 1 (Services);
- (W) **Services** means the services detailed in Schedule 1 (Services);
- (X) **Software** means the Supplier Software and API Tools, the On-premises Software and the Third Party Software collectively;
- (Y) **Software Health Check Services** Services that specifically relate to assessing the optimum configuration of the Customer's system for the installation of the Software in line with their security policy and best practice
- (Z) **Statement of Work** the summary supplied to the Customer by the Supplier setting out the scope of the Professional Services to be carried out as set out in Schedule 1;
- (AA) **Supplier Hosted Software** software licenced to the Customer by the Supplier or a third party under a separate software licence agreement which has been installed and is operating (or is to be installed and operational) on a cloud based or

- remotely hosted solution procured by the Supplier.
- (BB) **Supplier Materials** means any Supplier Software and API Tools, data, calculations, algorithms, methods, information and other materials created or supplied by the Supplier for use by the Customer;
- (CC) **Supplier Personnel** means an employee, consultant or subcontractor of the Supplier tasked with undertaking duties in connection with this Agreement;
- (DD) **Term** means the Term, as set out in Schedule 1 (Statement of Work) (Duration);
- (EE) **Third Party Software** means any software programs or applications supplied to the Customer by third parties and not by the Supplier; and
- (FF) **Third Party Vendor Support Services** means support services which are procured for the Customer from Third Party Software providers.
- (GG) **Training Services** means training in the use of the Software.

## 2 Interpretation

### 2.1 In this Agreement:

- 1.1.1 a reference to this Agreement includes its schedules, appendices and annexes (if any);
- 1.1.2 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;

- 1.1.3 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 2.1.1 a reference to a gender includes each other gender;
- 2.1.2 words in the singular include the plural and vice versa;
- 1.1.4 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 2.1.3 the table of contents, background section and any clause, schedule or other headings in this Agreement are included for convenience only and shall have no effect on the interpretation of this Agreement; and
- 2.1.4 a reference to legislation is a reference to that legislation as in force as at the date of this Agreement except to the extent that any such amendment, extension or re-enactment would increase either party's liability under this Agreement.

### 3 Duration

- 1.2 These terms will be binding on the parties from the Commencement Date, shall continue until such time as all Services and any licences provided in accordance with any Statement of Work or Proof of Concept have expired.
- 1.3 Services supplied under this Agreement shall commence and expire in accordance with the relevant Statement of Work, which shall be deemed to include these terms by reference.
- 1.4 Licences of Software supplied under this Agreement shall commence and expire in accordance with their terms.

## 4 Services

1.5 The Supplier shall provide the Services from the Service Location and during the Services Hours applicable to those Services for the Term in accordance with the terms of this Agreement.

4.1 Services provided by the Supplier under this Agreement do not include:

1.5.1 any services made necessary as a result of the Customer's misuse or modification of software or equipment other than in accordance with the Supplier's instructions;

4.1.1 Any services, systems or equipment required to access the internet (the Customer is solely responsible for procuring access to the internet and for all costs and expenses in connection with internet access, communications, data transmission and wireless or mobile charges incurred by it in connection with use of the Software unless such services are specifically listed in Schedule 1 (Statement of Work));

1.5.2 Dedicated data back-up, data storage or disaster recovery facilities (and the Customer should ensure it at all times maintains backups of Data) unless such services are specifically listed in Schedule 1 (Statement of Work);

1.5.3 Any services necessary to procure SSL digital certification (secure sockets layer certificate);

4.1.2 Any services necessary to effect domain name system changes at network or internet level;

1.5.4 The provision of any servers, hardware, firewall configuration, licence keys unless such services are specifically listed in Schedule 1 (Statement of Work) or the supply includes Supplier Hosted Software; and

4.1.3 Any software upgrades, server migration services or remediation work unless such services are specifically listed in Schedule 1 (Statement of Work).

- 1.6 Changes to the Services shall be dealt with in accordance with clause 18 (Change control).

## 5 Supplier warranties

- 1.7 The Supplier warrants that:

1.7.1 the Supplier has the right, power and authority to enter into this Agreement, to grant to the Customer the rights contemplated in this Agreement and to supply the Services;

5.1.1 the Services and the Deliverables do not and shall not infringe the Intellectual Property Rights of any third party.

- 1.8 The Supplier does not warrant or represent that the Software or the Services will be free from errors or interruptions.

- 1.9 The warranties and representations in this clause are subject to the customer giving notice to the Supplier as soon as it is reasonable able to upon becoming aware of the breach of warranty or representation. When notifying the Supplier of a breach the Customer shall use all reasonable endeavours to provide the Supplier with such documented information, details and assistance as the Supplier may reasonably request.

## 6 Customer Responsibilities

- 1.10 The Customer shall at its own cost provide or procure for the Supplier:

1.10.1 access to the Customer's premises and facilities where reasonably required and where agreed by both of the parties in advance;

6.1.1 access to Customer Software and Customer systems;

1.10.2 relevant information, instructions and assistance, including reasonable access to and cooperation by customer personnel; and

6.1.2 the obligations listed in Schedule 3 (Customer Responsibilities),

in each case as is reasonably necessary for the Supplier to perform its obligations under this Agreement.

- 1.11 The Customer shall ensure that the computer and operating system and any other hardware or software which the Supplier is asked by the Customer to use or modify for the purposes of performing the Supplier's obligations is either the property of the Customer or is legally licensed to the Customer and that the Supplier is authorised to use the same.
- 1.12 The Services are provided at the Customer's request and the Customer is responsible for ascertaining that the Services are suitable for its own needs.
- 1.13 Save as specifically authorised by the Supplier, the Customer shall only use the Services for its own benefit and not for the benefit of any third party.
- 6.2 Further to clause 6.4 above, the Supplier shall not unreasonably withhold or refuse consent to the Customer to share its services with its own outsourced IT department, however, where such consent is given by the Supplier, the Customer shall indemnify the Supplier against all costs, damages, expenses and losses arising as a consequence of any third party use of the Software which has been permitted by the Customer whether that relates to use by outsourced IT department or use which is otherwise connected to it.
- 6.3 The Customer warrants to the Supplier that:
- 1.13.1 The Customer has the right, power and authority to enter into this agreement and to grant to the Supplier the rights described in it to receive the Services;
- 1.13.2 Any Customer Materials do not and shall not infringe the Intellectual Property Rights of any third party if used in accordance with this Agreement;
- 1.13.3 Where the supply includes On-Premises Software and Customer Hosted Software, the Customer has in place appropriate virus protection and information security measures to protect its own systems and the data in its possession and control.
- 1.13.4 Where the supply includes any Third Party Software, the Customer shall enter into and comply with any necessary third party end-user licence agreements;

- 1.14 Further to clause 6.6 above, the Customer shall indemnify the Supplier against all costs, damages, expenses and losses arising as a consequence of any breach of the warranties contained in clause 6.6 above.

## 7 Supplier Relief

- 1.15 The Supplier shall not be liable to apply any deduction or to provide or any other remedies for failure to achieve the Service Levels unless the supplier has specifically been authorised by the Vendor to process service credits.

- 7.1 The Supplier shall not be liable for any failure to perform its obligations under this Agreement to the extent that the Supplier is prevented from performing its obligations under this Agreement as a result of a failure by the Customer to perform any Customer Responsibilities or the Customer's non-compliance with clause 5.3 above, or an event of Force Majeure.

## 8 Fees

- 8.1 The Customer shall pay the Fees due to the Supplier under this Agreement as set out in the Schedule.

- 8.2 All prices are exclusive of value added tax (if any) or any other locally applicable equivalent sales taxes (**VAT**), which is payable by the Customer at the rate and in the manner from time to time prescribed by law.

- 8.3 The parties agree that the Fees are fixed as set out in Schedule 4, or if no fees are set out in Schedule 4, in the Proposal or quotation provided to the Customer by the Supplier.

## 9 Invoicing and payment

- 9.1 The Supplier shall invoice the Customer for all sums due under this Agreement in advance of the supply of the Services.

- 1.16 Unless otherwise stated in Schedule 1 (Statement of Work) or Schedule 4 (Fees)The Customer shall pay the first invoice pursuant to the Services supplied under this Agreement in advance. All subsequent invoices shall be payable by the Customer within 30 calendar days of the date of the invoice.

- 1.17 Unless otherwise stated in Schedule 1 (Statement of Work) or Schedule 4 (Fees) Amounts payable to the Supplier under this Agreement shall be paid in GBP Sterling into the bank account notified by the Supplier to the Customer on the invoice.

## 10 Interest

If the Customer fails to make payment in accordance with this Agreement the Supplier shall be entitled, in addition to any unpaid amount that should properly have been paid, to apply interest on that amount from the final date for payment until the date of actual payment such interest to be calculated at a rate of 8% per year above the Bank of England base rate from time to time. It is agreed that the provisions of this clause constitute a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.

## 11 Intellectual Property Rights

- 1.18 Except as expressly stated in this clause no Intellectual Property Rights of either party are transferred or licensed as a result of this Agreement.

- 11.1 All Intellectual Property Rights in the Deliverables shall belong to and vest in the Supplier.

- 11.2 Without limitation to clause 11.1:

1.18.1 the Supplier grants the Customer a non-exclusive, non-transferable and royalty-free licence to use for its own benefit and to use in the Customer's business to enable the Customer to service its own customers, the Supplier Materials, including the Supplier Software and API Tools for the Term, to the extent necessary to enable the Customer to make use of the Services and the Deliverables and otherwise perform its obligations under this Agreement; and

1.18.2 the Customer grants the Supplier a non-exclusive, non-transferable and royalty-free licence to use the Customer Materials, including the Customer Software and the Customer Data, and to permit any Supplier subcontractor to use the same subject to the same restrictions as under this Agreement, for the Term, to the extent necessary to enable the Supplier to provide the



Services, supply the Deliverables and otherwise perform its obligations under this Agreement.

- 1.19 The Customer shall execute such further instruments, and do all further similar acts, as may be necessary or appropriate to carry out the purposes and intent of this clause 11.

## 12 Data protection

- 1.20 Each party shall comply with its respective obligations, and may exercise its respective rights and remedies, under Schedule 5.

## 13 Confidentiality

- 1.21 Each party agrees that it shall use the other party's Confidential Information only in the exercise of its rights and performance of its obligations under this Agreement and shall not disclose it except in accordance with this clause 13.
- 13.1 Subject to clause 1.23, each party may disclose the other party's Confidential Information to those of its employees, officers, advisers, agents or representatives who need to know it in order to exercise the disclosing party's rights or perform its obligations under this Agreement, provided that the disclosing party shall ensure that each of its employees, officers, advisers, agents or representatives to whom Confidential Information is disclosed is aware of its confidential nature and complies with this clause 13 as if it were a party.
- 1.22 Subject to clause 1.23, each party may disclose any Confidential Information required by law, any court, any governmental, regulatory or supervisory authority (including any regulated investment exchange) or any other authority of competent jurisdiction.
- 1.23 To the extent any Confidential Information is *Protected Data as defined in* Schedule 5 such Confidential Information may be disclosed or used only to the extent such disclosure or use does not conflict with any Schedule 5.

## 14 Limitation of liability

- 1.24 The extent of the Supplier's liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract or in any other way and

whether or not caused by negligence or misrepresentation) shall be as set out in this clause 14.

- 1.25 Subject to clauses 14.6, the Supplier's total liability shall not exceed a sum equivalent to the price paid for the particular element of the Services that gave rise to the liability.
- 1.26 Subject to clauses 14.6, neither party shall be liable for consequential, indirect or special losses.
- 14.1 Subject to clauses 14.6, neither party shall be liable for any of the following (whether direct or indirect):
- 14.1.1 loss of profit;
  - 14.1.2 loss or corruption of data;
  - 14.1.3 loss of use;
  - 14.1.4 loss of production;
  - 14.1.5 loss of contract;
  - 14.1.6 loss of opportunity;
  - 1.26.1 loss of savings, discount or rebate (whether actual or anticipated);
  - 14.1.7 loss arising from the acts or omissions of third parties;
  - 14.1.8 harm to reputation or loss of goodwill.
- 1.27 Except as expressly stated in this Agreement, and subject to clause 14.2, all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 14.2 Notwithstanding any other provision of this Agreement, the liability of the parties shall not be limited in any way in respect of the following:
- 14.2.1 death or personal injury caused by negligence;
  - 14.2.2 fraud or fraudulent misrepresentation;

14.2.3 any other losses which cannot be excluded or limited by applicable law;

## 15 Termination

1.28 The Supplier may suspend the provision of Services, or terminate this Agreement at any time by giving notice in writing to the Customer if:

1.28.1 the Customer commits a breach of this Agreement and such breach is not remediable;

15.1.1 the Customer commits a material breach of this Agreement which is not remedied within 20 Business Days of receiving written notice of such breach;

1.28.2 the Customer has failed to pay any amount due under this Agreement on the due date and such amount remains unpaid within 14 Business Days after the other party has received notification that the payment is overdue; or

1.28.3 any consent, licence or authorisation held by the other party is revoked or modified such that the other party is no longer able to comply with its obligations under this Agreement or receive any benefit to which it is entitled.

1.29 The Supplier may suspend the provision of Services, or terminate this Agreement at any time without prior notice to the Customer if that other party:

1.29.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;

1.29.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the non-defaulting party reasonably believes that to be the case;

15.1.2 becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;

15.1.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;

- 15.1.4 becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
- 15.1.5 becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
- 1.29.3 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- 15.1.6 has a resolution passed for its winding up;
- 15.1.7 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- 1.29.4 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven calendar days of that procedure being commenced;
- 15.1.8 has a freezing order made against it;
- 1.29.5 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
- 1.29.6 is subject to any events or circumstances analogous to those in clauses 1.29.1 to 1.29.5 in any jurisdiction; or
- 1.29.7 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 1.29.1 to 1.29.6 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 1.30 The Supplier may terminate this Agreement at any time by giving not less than four weeks notice in writing to the other party if the other party undergoes a change of Control.

- 1.31 The right of the Supplier to terminate the Agreement pursuant to clause 1.29 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to this Agreement.
- 1.32 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate this Agreement under this clause 15, it shall immediately notify the Supplier in writing.
- 1.33 Termination or expiry of this Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination.

## 16 Force majeure

Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from any event beyond the reasonable control of that party. The party affected by such an event shall promptly notify the other party in writing when such an event causes a delay or failure in performance and when it ceases to do so. If such an event continues for a continuous period of more than [3] months, either party may terminate this Agreement by written notice to the other party.

## 17 No partnership or agency

The parties are independent businesses and are not partners, principal and agent or employer and employee and this Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

## 18 Change control

- 1.34 Where the Customer or the Supplier wishes to make a change to this Agreement, whether in order to include an additional service, function or responsibility to be performed by the Supplier for the Customer under this Agreement, to amend the Services or the Service Levels as set out in the Services Schedule or otherwise, the Customer may at any time request, and the Supplier may at any time recommend,

such change and a new quotation shall be issued by the Supplier. . Such change shall be agreed by the parties only once a new purchase order is places by the Customer and accepted by the Supplier.

- 18.1 Any Services or other work performed by the Supplier and/or the Supplier Personnel for the Customer which have not been agreed in accordance with the provisions of this clause 18 shall be charged to the Customer at the fee rates set out in Schedule 4 or the standard Supplier fee rates from time to time in force or such other rates as are reasonably agreed between the parties.

## 19 Notices

- 1.35 Notices under this Agreement shall be in writing and sent to a party's address as set out on the first page of this Agreement (or to the fax number or email address set out below). Notices may be given, and shall be deemed received:

19.1.1 by first-class post: two Business Days after posting;

19.1.2 by airmail: five Business Days after posting;

19.1.3 by hand: on delivery;

19.1.4 by email to [address] in the case of the Customer and [address] in the case of the Supplier: on receipt of a delivery return email.

- 19.2 This clause does not apply to notices given in legal proceedings or arbitration.

## 20 Severability

- 1.36 Each clause of this Agreement is severable and distinct from the others. If any clause in this Agreement (or part thereof) is or becomes illegal, invalid or unenforceable under applicable law, but would be legal, valid and enforceable if the clause or some part of it was deleted or modified (or the duration of the relevant clause reduced):

1.36.1 the relevant clause (or part thereof) will apply with such deletion or modification as may be required to make it legal, valid and enforceable;  
and

1.36.2 without limiting the foregoing, in such circumstances the parties will promptly and in good faith seek to negotiate a replacement provision consistent with the original intent of this Agreement as soon as possible.

## **21 Waiver**

No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.

## **22 Set off**

The Customer must pay all sums that it owes to the Supplier under this Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

## **23 Assignment**

The Customer shall not assign, subcontract or encumber any right or obligation under this Agreement, in whole or in part, without the Supplier's prior written consent (such consent not to be unreasonably withheld or delayed).

## **24 Third party rights**

Except as expressly provided for in this Agreement, 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 of the provisions of this Agreement.

## **25 Dispute resolution**

1.37 If any dispute arises between the parties out of or in connection with this Agreement, the matter shall be referred to the account managers of each party who shall use their reasonable endeavours to resolve it.

1.38 Either party may issue formal legal proceedings or commence arbitration at any time whether or not the steps referred to in clauses 1.37 have been completed.

**26 Governing law**

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

**27 Jurisdiction**

The parties irrevocably agree 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, its subject matter or formation (including non-contractual disputes or claims).

AGREED by the parties on the date set out at the head of this Agreement

Signed by [ <i>insert full name of director/authorised signatory</i> ]	.....
for and on behalf of	<b>[Director OR Authorised signatory]</b>
<b>Pro2col Limited</b>	

and

Signed by [ <i>insert full name of director/authorised signatory</i> ]	.....
for and on behalf of	<b>[Director OR Authorised signatory]</b>
[ <i>insert name of Customer company</i> ]	



## SCHEDULE 1 Statement Of Work

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### 1 Services

1.1 INSTALLATION SERVICES

1.2 TRAINING SERVICES

1.3 SUPPORT SERVICES

*[Insert Pro2col Statement of Work]*

## SCHEDULE 2 SERVICE LEVELS

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[insert the appropriate Pro2col SLA here]

### SCHEDULE 3

#### CUSTOMER RESPONSIBILITIES

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*[insert customer responsibilities in this schedule, ie. those Customer obligations upon which the Supplier's performance is dependent e.g entering into EULA, including timing as appropriate. Or refer to appropriate part of the Statement of Work]*

## SCHEDULE 4 PROPOSAL

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The Fees, charges, payments and expenses for the Services are as follows: *[Insert applicable fee structure, eg:]*

**1** *[Insert description]* **Services:**

*[Insert fees]*

**2** **Other Services:**

*[Insert fees]*

**3** **Exit Services:**

*[Insert fees]*

## SCHEDULE 5

### DATA PROTECTION

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#### 1 Definitions

##### 1.1 In this Schedule:

- |      |                             |   |
|------|-----------------------------|---|
| (HH) | <b>applicable law</b>       | means applicable law of the United Kingdom (or of a part of the United Kingdom);  |
| (II) | <b>Controller</b>           | has the meaning given in applicable Data Protection Laws from time to time;   |
| (JJ) | <b>Data Protection Laws</b> | means, as binding on either party or the Services: <ul style="list-style-type: none"> <li>(a) the GDPR;</li> <li>(b) the Data Protection Act 2018;</li> <li>(c) any laws which implement or supplement any such laws; and</li> <li>(d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;</li> </ul> |
| (KK) | <b>Data Subject</b>         | has the meaning given in applicable Data Protection Laws from time to time;   |
| (LL) | <b>GDPR</b>                 | means the General Data Protection Regulation, Regulation (EU) 2016/679, as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal)  |

		Act 2018 (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time);
(MM)	<b>International Organisation</b>	has the meaning given in applicable Data Protection Laws from time to time;
(NN)	<b>Personal Data</b>	has the meaning given in applicable Data Protection Laws from time to time;
(OO)	<b>Personal Data Breach</b>	has the meaning given in applicable Data Protection Laws from time to time;
(PP)	<b>processing</b>	has the meaning given in applicable Data Protection Laws from time to time (and related expressions, including <b>process</b> , <b>processed</b> and <b>processes</b> shall be construed accordingly);
(QQ)	<b>Processor</b>	has the meaning given in applicable Data Protection Laws from time to time;
(RR)	<b>Protected Data</b>	means Personal Data received from or on behalf of the Customer in connection with the performance of the Supplier's obligations under this Agreement; and
(SS)	<b>Sub-Processor</b>	means any Processor engaged by the Supplier (or by any other Sub-Processor) for carrying out any processing activities in respect of the

Protected Data on behalf of the Customer.

## 2 Customer's compliance with Data Protection Laws

The parties agree that the Customer is a Controller and that the Supplier is a Processor for the purposes of processing Protected Data pursuant to this Agreement. The Customer shall, at all times, comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to the Supplier in respect of Protected Data (including the terms of this Agreement) shall at all times be in accordance with Data Protection Laws. Nothing in this Agreement relieves the Customer of any responsibilities or liabilities under any Data Protection Laws.

## 3 Supplier's compliance with Data Protection Laws

The Supplier shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of this Agreement.

## 4 Indemnity

The Customer shall indemnify and keep indemnified the Supplier against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the Customer of its obligations under this Schedule.

## 5 Instructions

5.1 The Supplier shall only process (and shall ensure Supplier Personnel only process) the Protected Data in order to provide the Services under this Agreement, except to the extent:

5.1.1 that alternative processing instructions are agreed between the parties in writing; or

5.1.2 otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest).

5.2 Without prejudice to paragraph 1 of this Schedule 5, if the Supplier believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall promptly inform the Customer and be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.

## 6 Security

6.1 The Supplier shall implement and maintain the technical and organisational measures to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.

## 7 Sub-processing and personnel

7.1 The Supplier shall:

7.1.1 not permit any processing of Protected Data by any Sub-Processor without the prior specific written authorisation of the Customer;

7.1.2 ensure that all persons authorised by the Supplier or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.

## 8 Authorised Sub-Processors

The Customer authorises the appointment of all third party Suppliers listed in Schedule 1 as Sub-Processors.

## 9 Assistance

9.1 The Supplier shall (at the Customer's cost and expense) assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of the processing and the information available to the Supplier.



- 9.2 The Supplier shall (at the Customer's cost and expense) and taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR in respect of any Protected Data.
- 9.3 The Supplier shall *at the* Customer's cost and expense refer to the Customer all requests it receives for exercising any Data Subjects' rights under Chapter III of the GDPR which relate to any Protected Data. It shall be the Customer's responsibility to reply to all such requests as required by applicable law.

## 10 International transfers

The Supplier shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to any country or territory outside the United Kingdom or to any International Organisation without the prior written authorisation of the Customer except where required by applicable law (in which case the provisions of paragraph 5.1 of this Schedule 5 shall apply).

## 11 Audits and processing

The Supplier shall, in accordance with Data Protection Laws, make available to the Customer on request such information that is in its possession or control as is necessary to demonstrate the Supplier's compliance with the obligations placed on it under this Schedule and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR, The Supplier shall, however, be entitled to withhold information where it is commercially sensitive or confidential to it or its other customers.

## 12 Breach

The Supplier shall notify the Customer without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Protected Data.

## 13 Deletion/return

- 13.1 On the end of the provision of the Services relating to the processing of Protected Data (the **Processing End Date**), at the Customer's cost and expense and the Customer's option, the Supplier shall either return all of the Protected Data to the

Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires the Supplier to store such Protected Data. To the extent the Customer has not notified the Supplier within 14 days of the Processing End Date that it requires the return of any Protected Data the Supplier is irrevocably authorised to securely dispose of the Protected Data at the Customer's cost and expense.

## 14 Survival

14.1 This Schedule shall survive termination or expiry of this Agreement:

14.1.1 indefinitely in the case of paragraphs 4 and 13 of this Schedule 5; and

14.1.2 in the case of all other paragraphs and provisions of this Schedule, until the later of:

- (a) the termination or expiry of this Agreement; or
- (b) return or secure deletion or disposal of the last of the Protected Data in the Supplier's (or any of its Sub-Processor's) possession or control in accordance with this Agreement.

## SCHEDULES 6 & 7

### SUBSCRIPTION/ EULA Terms and ON PREMISES SOFTWARE LICENCE