

## Purchase Order Terms and Conditions

### 1. Definitions and interpretation.

1.1 The following terms shall have the following meanings assigned to them in these Terms and Conditions:

**Affiliate** means, in relation to any person, any holding or subsidiary company of that person and any subsidiary of such holding company (as the terms holding company and subsidiary company are defined by section 1159 of the Companies Act 2006).

**Agreement** means the contract constituted by Seller's acceptance of an Order that incorporates these Terms and Conditions.

**Applicable Law** means any law, statute, enactment, order, regulation or other similar instrument which is relevant to the exercise or enjoyment of rights, or the performance of obligations, in each case arising under the Agreement.

**Anti- Bribery and Corruption Laws** means the Bribery Act 2010, the US Foreign Corrupt Practices Act of 1977 or the anti-bribery and corruption laws of any jurisdiction to which Seller is or has been subject and in each case any related rules, orders, regulations and guidance.

**Anti-Corruption Obligation** has the meaning given to it in Clause 18.1.

**Audit Records** has the meaning given to it in Clause 13.1.

**Authorised Sub-contractor** means a sub-contractor of Seller approved in writing by Buyer and which is providing Goods (or a subset of them) on behalf of Seller.

**Business Day** means a day (other than a Saturday or Sunday) on which banks are generally open for business in London.

**Buyer Group** means Boldyn Networks Infrastructure UK Limited and Boldyn Networks UK Limited any legal entity that is an Affiliate of Boldyn Networks Infrastructure UK Limited.

**Buyer** means the Buyer Group entity raising, or otherwise signing, the Order.

**Buyer User** means any of Buyer's customers receiving Buyer's products or services.

**Confidential Information** means in relation to Buyer Group and Seller, information that: (a) is by its nature confidential; and/or (b) is designated in writing by that party as confidential contemporaneously with its disclosure; or (c) the other party knows or ought reasonably to know is confidential; and (d) includes trade secrets, know-how, inventions, techniques, processes, software programmes, schematics, contracts, customer information, financial information, budgets, sales information, marketing, public relations, advertising and commerce plans, strategies, designs, business plans, products and product designs, sourcing information.

**Data Processing Agreement** means the data processing agreement as set out in Annex 1 to these Terms and Conditions.

**Data Protection Laws** means any applicable law regarding the processing, privacy, and use of personal data including: (a) the EU General Data Protection Regulation 2016/679 (GDPR) as it forms part of the law of England and Wales by virtue of section 3 of the European Union (Withdrawal) Act 2018 (the UK GDPR); (b) the UK Data Protection Act 2018; (c) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) (as amended); and (d) to the extent applicable, the data protection or privacy laws of any other country.

**Disclosing Party** has the meaning given to it in Clause 10.1.1.

**Fees** means the fees, charges, and other costs for Seller's provision of the Goods to Buyer pursuant to the Agreement.

**Goods** means the goods, materials, deliverables, licences, and/or services (and any results thereof) that are detailed in the Order and/or that are otherwise required or provided pursuant to the Agreement.

**IPR** means any patents, designs, trademarks, trade names, copyright in all specifications, drawings and technical descriptions, computer software and databases, database rights, moral rights, inventions (whether or not capable of protection by patent or registration), rights in commercial information, trade secrets and technical information, and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world.

**Insolvency Event** means any of the following: (a) Seller is unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act, 1986; (b) Seller makes or proposes any voluntary arrangement or composition with its creditors; (c) a bankruptcy or winding up petition is presented for Seller; (d) Seller enters into compulsory or voluntary liquidation; (e) Seller has a receiver or other officer appointed over the whole or any part of Seller's assets or undertaking; (f) Seller has an administrator appointed to manage Seller's affairs, business and property; (g) Seller takes or suffers any similar action in consequence of debt or insolvency under the laws of England or any equivalent of the foregoing in any other jurisdiction.

**Loss** means all losses, liabilities, damages, costs and expenses (including tax, legal fees and disbursements and costs of investigation, litigation, settlement, judgement, interest and penalties).

**Order** means the purchase order which will detail the Goods and the Fees, and any other appropriate information regarding the provision of the Goods, which together with these Terms and Conditions forms the Agreement.

**Receiving Party** has the meaning given to it in Clause 10.1.1.

**Seller** means the entity (or natural person if there is no entity) specified on the Order as the seller or supplier

of the Goods to Buyer.

**Seller Personnel** has the meaning given to it in Clause 12.1.

**Terms and Conditions** means these purchase order terms and conditions.

- 1.2 Words suggesting the singular include the plural, and vice versa. Words suggesting any gender include all other genders. Headings used in these Terms and Conditions are for ease of reference only and will not affect its interpretation. Use of the words "includes" or "including" means includes or including, without limitation. References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or replaced from time to time. References to Clauses are to clauses of these Terms and Conditions. References to a person or entity shall include references to individuals, bodies corporate, unincorporated associations, partnerships and any other entity having legal capacity. References to a month are references to a calendar month. References to a day are references to a calendar day. References to a year are to a calendar year.

## 2. Accepting the Order.

- 2.1 The Order is Buyer's offer for Seller to provide the Goods on the offered terms and conditions.
- 2.2 The Order, together with these Terms and Conditions incorporated therein, (which is defined as the Agreement in Clause 1.1) comes into effect when Seller accepts Buyer's offer by: (i) signing the Order; (ii) providing the Goods pursuant to the Order; or (iii) impliedly or expressly communicating acceptance of the Order.
- 2.3 The Agreement consists of the Order and these Terms and Conditions, and any supplements, specifications or other documents, in each case only if expressly incorporated into this Agreement by reference. Any terms and conditions that are stated on any quote, invoice, order form, or other documentation provided by Seller have no force or effect.

## 3. Delivery of the Goods.

- 3.1 Seller will provide the Goods to Buyer in accordance with the timeframes as specified in the Order and at the location as stated in the Order (or as otherwise instructed by Buyer from time to time).
- 3.2 Time is of the essence for the performance of Seller's obligations in the provision of the Goods. If delivery of Goods is not completed by the time promised, Buyer may, without liability, (and without prejudice to its other rights and remedies):
  - 3.2.1 terminate the Agreement in accordance with Clause 14.1.2; and/or
  - 3.2.2 purchase substitute Goods elsewhere and charge Seller for the costs thereof.
- 3.3 Seller is responsible for all costs in connection with the delivery of the Goods to the location pursuant to Clause 3.1.
- 3.4 Seller shall promptly provide Buyer with written notice if it is aware (or ought to reasonably be aware) that there are likely to be (or will be) delays in the provision of the Goods (in whole or in part). Such notice does not in any way relieve Seller from performing its obligations

under the Agreement.

- 3.5 Buyer may inspect any Goods and may reject any Goods that are in Buyer's judgment defective or which otherwise breach any of Seller's obligations under the Agreement. Goods rejected and Goods supplied in excess of quantities agreed may be returned to Seller at Seller's expense and, without prejudice to Buyer's other rights and remedies, Buyer may charge Seller all expenses of unpacking, examining, repacking and reshipping such Goods.
- 3.6 Seller will include shipping marks, as specified by Buyer, on all packaging. Seller will pack the Goods in such a manner as to be safe from damage or deterioration while in transit or storage.
- 3.7 If in order to comply with the specified delivery date it becomes necessary for Seller to ship the Goods in a more expensive way than specified in the Order, any increased transportation costs resulting therefrom will be paid for by Seller unless the necessity for such rerouting or expedited handling has been caused by the fault of Buyer. Seller shall comply with Buyer's shipping and packing instructions as may be given either verbally or in writing. Seller shall provide notice to Buyer at time of shipment and include a copy of the packing list and any other applicable shipping documents.

## 4. Approval of drawings and data.

- 4.1 If the Order requires the submission of drawings and/or other data, Seller will submit same for Buyer's written approval on or before the time specified in the Order (or if no time is specified, then as soon as possible to allow Buyer reasonable time for review).
- 4.2 If prior approval of such drawings and/or other data is required before Seller may commence with any part of the provision of the Goods, and Seller commences such provision (at its own risk) without obtaining Buyer's approval, Seller will be solely liable for any costs incurred as a result of having proceeded with performance prior to such approval.

## 5. Warranties.

- 5.1 Seller represents, warrants, and undertakes that it:
  - 5.1.1 has the right, power, and authority to enter into and to carry out its obligations under the Agreement;
  - 5.1.2 (and the provision of the Goods under the Agreement) will comply with all Applicable Law;
  - 5.1.3 owns or has the right to use, and will at all times own or have the right to use, all IPR licensed by it to Buyer under the Agreement; and
  - 5.1.4 will comply with all policies and standards made available to Seller by Buyer from time to time.
- 5.2 Seller represents, warrants, and undertakes that all Goods provided under this Agreement will:
  - 5.2.1 conform to all specifications and appropriate standards as required by Buyer;
  - 5.2.2 be free of liens and defects in material, workmanship, and design;
  - 5.2.3 conform to any statements made on the containers, labels, and/or advertisements for such Goods and that such Goods will be adequately contained, packaged, marked, and labelled, where necessary and applicable;

5.2.4 be merchantable, will conform in all respects to any samples, and will be safe and fit for their intended purpose;

5.2.5 be provided by appropriately experienced, qualified, and trained personnel who will act with due care and skill in accordance with good industry practice; and

5.2.6 not infringe any third party's IPR.

5.3 Inspection, testing, acceptance or use of the Goods will not affect Seller's obligations under this Clause 5, and such representations, warranties, and undertakings will survive inspection, testing, acceptance and use.

5.4 Buyer will have the benefit of any other warranties that may be applicable.

5.5 Without prejudice to Buyer's other rights and remedies, Seller will promptly replace or correct (as applicable) defects in any Goods not conforming to the representations, warranties, and undertakings under this Clause 5, without expense to Buyer, when notified of such nonconformity by Buyer, provided Buyer elects to provide Seller with the opportunity to do so.

## **6. Indemnification.**

6.1 Seller will defend, indemnify and hold harmless each member of Buyer Group, and each Buyer User, against all Loss and expenses (including attorney's fees) arising out of or resulting in any way from:

6.1.1 any defect in the Goods;

6.1.2 any act or omission of Seller, its agents, employees or subcontractors;

6.1.3 any negligence or wilful misconduct of Seller, its agents, employees or subcontractors;

6.1.4 a breach of Clause 11.2;

6.1.5 any claim that any of the Goods (and/or any Buyer Group member's, or Buyer' User's, use of the Goods) infringe the IPR of any third party; and

6.1.6 any claim or threatened claim that that an employment or other relationship exists between a Buyer Group entity and any Seller Personnel or arising out of Seller's failure to comply with Clause 12.

6.2 This indemnification shall be in addition to the representations, warranties and undertakings as set out in Clause 5 and shall survive the cancellation, termination, expiration or completion of the Agreement.

## **7. Intellectual property.**

7.1 Unless expressly stated in the Order, all IPR in the Goods shall be Buyer's property and Seller hereby assigns absolutely, with full title guarantee, the IPR in the Goods to Buyer.

7.2 For IPR in the Goods that is not assigned to Buyer pursuant to Clause 7.1, Seller hereby grants to each member of Buyer Group a royalty-free, worldwide, transferable, non-exclusive, licence to use, copy and maintain the IPR in the Goods to the extent necessary for Buyer to obtain the full benefit of the Goods.

## **8. Title, Risk, and Insurance.**

8.1 Title and risk in the Goods passes to Buyer on delivery of the Goods in accordance with the Agreement, and

subject to Buyer's right to accept or reject the Goods pursuant to Clause 3.5.

8.2 Seller shall maintain all necessary insurance coverages including public liability and Workers' Compensation Insurance, at a level sufficient to cover its liability under the Agreement.

## **9. Fees.**

9.1 In consideration of the provision of the Goods by Seller, Buyer will pay the Fees to Seller after Buyer's acceptance of the Goods, in accordance with the Order and this Clause 9.

9.2 The Fees for the Goods will be set out in the Order. The Fees are exclusive of VAT. Except for VAT, Buyer will not be liable for the payment of any fees, taxes, charges or expenses that are not identified in the Agreement as Fees. Buyer shall make all payments under the Agreement without any deduction or withholding for or on account of tax, unless such a deduction or withholding is required by Applicable Law.

9.3 Seller will submit a correct and valid invoice (in accordance with Buyer's invoicing requirements as notified by Buyer to Seller from time to time) for the Fees that are due and payable, on or after the date of Buyer's acceptance of the Goods.

9.4 Buyer will pay properly rendered invoices in respect of undisputed Fees within 45 days after the date of receipt of the invoice.

9.5 Buyer may dispute any Fees in good faith, at any time, even if it has paid such Fees.

9.6 Buyer may withhold payment of Fees that it disputes in good faith (or, where Buyer disputes in good faith Fees which it has already paid, Buyer may withhold payment of subsequent Fees to a value equal to the amount in dispute), provided that it notifies Seller of the amount disputed and the basis for the dispute.

9.7 Improperly delayed payments of undisputed Fees or any other sums properly due under the Agreement shall be subject to interest on the amount unpaid from the due date to the actual date of payment at a rate equivalent to 2% per annum above the Bank of England's base rate. The right to charge interest shall not apply in the event that there is a good faith dispute in respect of the amount in question, irrespective of the outcome of such dispute.

9.8 Seller will maintain complete and accurate records of, and supporting documentation for, invoices submitted to Buyer and all payments made by Buyer under the Agreement in accordance with generally accepted accounting principles. Seller will provide Buyer with records, documentation and other information, as maintained by Seller, with respect to each invoice as may be reasonably requested by Buyer to verify the accuracy of such invoice and compliance by Seller with the provisions of the Agreement.

9.9 Buyer may set off any service credits, refunds, rebates or any other sums under the Agreement owed by Seller to Buyer against any monies payable by Buyer to Seller under the Agreement.

9.10 Seller warrants that the Fees for the Goods are not less favourable than those currently agreed with (or otherwise formally quoted to) any other customer for the goods that are the same or similar to the Goods. In the event Seller reduces its fees for any such similar

goods during the term of the Agreement, Seller agrees to reduce the Fees for the Goods provided hereunder correspondingly.

## 10. Confidentiality.

### 10.1 Buyer and Seller shall each:

10.1.1 keep all Confidential Information given by one party (the **Disclosing Party**) to the other party (the **Receiving Party**) or otherwise obtained by the Receiving Party, confidential, and shall not (except as expressly permitted under the Agreement) disclose, make copies of or otherwise use the Confidential Information;

10.1.2 appropriately safeguard the Disclosing Party's Confidential Information;

10.1.3 without undue delay and in any event within no more than 3 days, notify the Disclosing Party if it suspects or becomes aware of any unauthorised access to, copying, use or disclosure of the Disclosing Party's Confidential Information in any form; and

10.1.4 do all things, execute all documents and give all assistance reasonably required by the Disclosing Party to enforce any obligation of confidence imposed or required to be imposed by the Agreement.

10.2 Buyer and Seller acknowledge and agree that damages may not provide an adequate remedy for a breach of the terms of this Clause 10 and that accordingly each party is entitled, in addition to damages, to seek an injunction in the event of such breach to prevent the violation of the obligations contained in this Clause 10.

10.3 The Receiving Party may only use and copy the Disclosing Party's Confidential Information to the extent necessary:

10.3.1 to comply with its obligations under the Agreement;

10.3.2 to enable it to exercise its rights under the Agreement; or

10.3.3 to enable it to comply with any Applicable Law.

10.4 Nothing in the Agreement prohibits the use, copying or disclosure of any Confidential Information by either party to the extent that:

10.4.1 such Confidential Information is already in the public domain (other than through a breach of an obligation of confidence owed to the Disclosing Party);

10.4.2 such Confidential Information has been independently developed by the Receiving Party without reference to the Confidential Information of the Disclosing Party;

10.4.3 the Disclosing Party has approved in writing the particular use or disclosure of the Confidential Information;

10.4.4 such Confidential Information is already known by the Receiving Party without any obligation of confidence; or

10.4.5 such Confidential Information is independently or rightfully received from a third party without any obligation of confidence.

10.5 Nothing in the Agreement prohibits Buyer from

disclosing Confidential Information to a Buyer Group member.

10.6 Nothing in the Agreement shall prevent the Receiving Party from disclosing any Confidential Information where the disclosure is expressly required by Applicable Law or otherwise by any relevant governmental or regulatory authority or court entitled by Applicable Law to disclosure of the same, provided that the Receiving Party:

10.6.1 gives the Disclosing Party prompt notice of such requirement to disclose (to the extent permissible) to enable the Disclosing Party to seek an appropriate protective order;

10.6.2 uses reasonable endeavours to minimise any such disclosure or to assist the Disclosing Party in preventing or restricting the disclosure (in each case at the Disclosing Party's cost); and

10.6.3 uses reasonable endeavours to require the recipient of such Confidential Information to preserve the confidential nature of the Confidential Information once disclosed.

10.7 Except as provided in Clauses 10.5 and 10.6, and subject to its compliance with this Clause 10 generally, if a Disclosing Party discloses Confidential Information, the Disclosing Party will ensure that the recipient of the Confidential Information is aware of the confidentiality requirements of this Clause 10.

10.8 The obligations with respect to Confidential Information disclosed under the Agreement will survive termination of the Agreement and continue for as long as the information in question retains commercial value or for a period of 2 years from the date of disclosure of any Confidential Information, whichever is the later.

10.9 Seller will not advertise or publish the fact that Buyer has contracted to purchase Goods from Seller.

10.10 Seller will immediately return (and where applicable destroy copies of) all Buyer (and any member of Buyer Group's) Confidential Information disclosed by Buyer (or otherwise received by Seller) on Buyer's request.

## 11. Data Protection.

11.1 Seller will comply with all applicable requirements of Data Protection Laws.

11.2 If Seller processes personal data under the Agreement on a processor-to-controller relationship then Seller will comply with the Data Processing Agreement. A breach by Seller of this Clause 11.2 will constitute a material breach of the Agreement.

## 12. Seller personnel.

12.1 In the event that Seller's obligations hereunder require or contemplate performance of services by Seller's employees, or persons under contract to Seller (**Seller Personnel**), Seller agrees that all such work shall be done as an independent contractor and that Seller Personnel doing the work shall not be considered employees of Buyer.

12.2 Seller will ensure that the Seller Personnel will at all times comply with the access and security requirements (and other related policies) of Buyer, and all of Buyer's reasonable directions and instructions, when accessing Buyer's premises or systems.

12.3 Seller is solely responsible for all matters relating to any

contract of employment or other engagement with Seller Personnel.

### **13. Audit.**

13.1 Seller will maintain (in an orderly, auditable and accessible manner) complete and accurate data, records and information relevant to the provision of the Goods and otherwise relevant to the Agreement (**Audit Records**).

13.2 Seller will retain the Audit Records for at least 6 years after termination or expiry of the Agreement (or such other period as may be required to comply with Applicable Law).

13.3 Seller will provide Buyer will full access to, and the right to take copies of, the Audit Records on Buyer's request.

### **14. Termination.**

14.1 Buyer may by written notice to Seller immediately terminate the Agreement without liability to Seller in the event that Seller:

14.1.1 defaults or otherwise fails to comply with any of the terms and conditions of the Agreement, including for delivering the Goods late, delivering defective or non-conforming Goods, and failure to provide Buyer, upon request, with reasonable assurances of future performance;

14.1.2 commits a material breach of the Agreement, which is not remedied within 10 days of receipt of written notice from Buyer to Seller; and/or

14.1.3 suffers or is subject to an Insolvency Event.

14.2 Buyer may terminate the Agreement in whole or in part at any time, for convenience, on providing at least 30 days prior written notice to Seller. Subject to Seller taking all reasonable steps to mitigate its loss, Buyer will, on such termination, reimburse Seller the reasonable costs incurred in the performance of Seller's obligations up to the date of termination, provided that such reasonable costs do not exceed the agreed Fees for the Goods. Seller shall not be paid for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided or for any work done by Seller after its receipt of the notice of termination.

14.3 Prior to termination or expiry of the Agreement, Seller will consult with Buyer about the steps to be taken to ensure an orderly cessation of the Goods (where the Goods are services) and to maintain Buyer's business continuity, including the delivery or migration of Buyer's data in a meaningful and useable format to Buyer or a successor of Seller.

14.4 The provisions of the Agreement which expressly or by implication are intended to survive termination or expiry of the Agreement will do so and will continue to be binding without limit in time.

### **15. Limitation on Buyer's Liability.**

15.1 Except for liability in respect of: (a) death or personal injury caused by a party's negligence; (b) either party's fraud or fraudulent misrepresentation; (c) any other liability that cannot be excluded at law, in each case, which is unlimited, Buyer's (and each member of Buyer Group's) aggregate liability to Seller is limited to an amount equal to the Fees paid and/or payable for the Goods.

15.2 Subject to Clause 15.1(a) to (c), in each case, which is unlimited, in no event shall Buyer (or any member of the Buyer Group) be liable for anticipated profits or for special, incidental or consequential Loss.

15.3 Buyer shall not be liable for penalties of any description.

### **16. Force Majeure.**

16.1 Neither Buyer nor Seller shall be liable to the other for any failure to perform in accordance with the Agreement if, and to the extent that, such failure arises out of any cause or event beyond its reasonable control and without its fault or negligence, including labour disputes, strikes, fires, acts of God and accidents.

16.2 In the event Buyer is delayed or restricted in its ability to take delivery and/or make use of the Goods as originally contemplated by reason of any event beyond its reasonable control and without its fault, Buyer may postpone the delivery dates, modify, or terminate the Agreement (in whole or in part) to such extent as is reasonable under the circumstances without any obligations or liability to Seller.

### **17. Notices.**

17.1 Any notice, demand or other communication given or made under or in connection with the matters contemplated by the Agreement (a **Notice**) will be in writing and will be delivered by hand, email or prepaid first class post (air mail if posted to or from a place outside the United Kingdom): (a) in the case of Buyer to: 2 Kingdom Street Level 2, 2 Kingdom Street, London, Paddington, England, W2 6BD, marked for the attention of "General Counsel: UK and Ireland"; and (b) in the case of Seller to: the physical address or email address that Seller provided to Buyer during the onboarding process or as otherwise specified in the Order.

17.2 Any notice shall be deemed to have been duly given or made as follows:

17.2.1 if delivered by hand, upon delivery at the address of the relevant party;

17.2.2 if sent by first class post, 2 Business Days after the date of posting; and

17.2.3 if sent by air mail, 4 Business Days after the date of posting;

17.2.4 if sent by email, 1 Business Day after sending,

provided that if, in accordance with the above provision, any such notice, demand or other communication would otherwise be deemed to be given or made after 5.00 p.m. (UK time), such notice, demand or other communication shall be deemed to be given or made at 9.00 a.m. on the next following Business Day.

### **18. Anti-bribery and corruption.**

18.1 Seller will: (a) comply with Anti-Bribery and Corruption Laws; (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom; (c) have, maintain, implement and monitor policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance with the Anti-Bribery and Corruption Laws and will enforce them where appropriate; (d) not, and will procure that its Affiliates, Seller Personnel or Authorised Sub-contractors shall

not, offer, give or agree to give any person whosever, or solicit, accept or agree to accept from any person, either directly or indirectly, anything of value in order to influence, induce or reward any improper advantage in connection with the Agreement (the **Anti-Corruption Obligation**); (e) promptly report to Buyer details of any breach of the Anti-Corruption Obligation; and (f) ensure that all Seller Personnel are aware of and comply with such policies and procedures in all their activities, whether in connection with the Agreement or otherwise, and will procure (by way of a primary obligation and not by way of guarantee or other secondary obligation) that any other person for whose acts or defaults Seller may be liable under the Anti-Bribery and Corruption Laws does the same.

### **19. Assignments and Subcontracting.**

- 19.1 The Agreement is personal to the parties and accordingly neither party may assign, encumber, declare a trust over or otherwise transfer in any way any of its rights or obligations arising under the Agreement without the prior written consent of the other party.
- 19.2 Notwithstanding Clause 19.1, Buyer may assign, encumber, declare a trust over or otherwise transfer its rights or obligations arising under the Agreement to its Affiliates, without the consent of Seller.
- 19.3 Subject to Clause 19.1, all provisions contained in the Agreement shall extend to and be binding upon the parties and their respective successors and permitted assignees.

### **20. Variation.**

- 20.1 No variation to the Agreement will be effective unless it is in writing and signed by both parties.

### **21. Waiver.**

- 21.1 A waiver of any term, provision or condition of, or consent granted under, the Agreement shall be effective only if given in writing and signed by the waiving or consenting party and then only in the instance and for the purpose for which it is given.
- 21.2 No failure or delay on the part of either party in exercising any right, power or privilege under the Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 21.3 No breach of any provision of the Agreement shall be waived or discharged except with the express written consent of the parties.

### **22. Severability.**

- 22.1 If any of the provisions of the Agreement are held to be invalid or unenforceable by Applicable Law or a court of competent jurisdiction, such invalidity or unenforceability will not invalidate or render unenforceable the entire Agreement, but rather the Agreement shall be construed as if not containing the particular invalid or unenforceable provision(s) and the rights and obligations of the parties shall be construed and enforced accordingly.

### **23. Entire agreement.**

- 23.1 Each party acknowledges and agrees with the other party that:

23.1.1 the Agreement, together with any other documents expressly incorporated by reference in the Agreement, constitutes the entire agreement between the parties relating to its subject matter; and

23.1.2 it has not been induced to enter into the Agreement in reliance upon, nor been given, any warranty, representation, statement, assurance, covenant, agreement, undertaking, indemnity or commitment of any nature whatsoever other than as are expressly set out in the Agreement and, to the extent that any of them has been, it unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation thereto,

provided that the provisions of this Clause 23 will not exclude any liability which either of the parties would otherwise have to the other party in respect of any statements made fraudulently by the other party prior to the execution of the Agreement, or any rights which either of them may have in respect of fraudulent concealment by the other party.

### **24. Third Party Act.**

- 24.1 The Agreement is entered into by Buyer for the benefit of each Buyer Group member, which may make use of the Goods, and any such Buyer Group member may enforce any of Seller's obligations and/or Buyer's rights under the Agreement in accordance with the Contracts (Rights of Third Parties) Act, 1999. Save for the rights of each Buyer Group member, a person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act, 1999 to enforce or benefit from any part of the Agreement.

### **25. Cumulative rights.**

- 25.1 A right, power, remedy, entitlement or privilege given or granted to a party under the Agreement is cumulative with, without prejudice to and not exclusive of any other right, power, remedy, entitlement or privilege granted or given under the Agreement or by Applicable Law.

### **26. Relationship of parties.**

- 26.1 Nothing in the Agreement or any circumstances associated with it or its performance shall give rise to any relationship of agency, partnership or employer and employee between Buyer and Seller or between Buyer and any Seller Personnel or any Authorised Sub-contractor.

### **27. Governing law and jurisdiction.**

- 27.1 The Agreement, and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to the Agreement or its formation (including any non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 27.2 Each party agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.

## Annex 1

### Data Processing Agreement

#### 1. Definitions and Interpretation.

1.1 In this Annex 1, the following terms shall have the meanings set out below:

**Adequate Country** means: (a) a third country; (b) a territory; (c) one or more sectors or organisations within a third country; or (d) an international organisation, that the Secretary of State (in the case of UK Transfers) or the European Commission (in respect of EU Transfers) has deemed to provide an adequate level of protection for personal data under Data Protection Laws.

**Customer Personal Data** means any personal data processed by Seller on behalf of Buyer as described in the Order as amended from time to time by the parties in writing.

**EU SCCs** means the Standard Contractual Clauses annexed to European Commission Decision (2021/914/EU).

**Sub-Processor** means any third party appointed by or on behalf of Seller to process Customer Personal Data.

**Supervisory Authority** means any applicable supervisory authority with jurisdiction over either party, including the Information Commissioner's Office, any relevant EU supervisory authority and the European Data Protection Board and in each case any successor body from time to time.

**Restricted Transfer** means any transfer of Customer Personal Data which is undergoing processing or is intended for processing after transfer to a country or entity that is not an Adequate Country. For the avoidance of doubt this may be directly by Buyer to Seller, or onward by Seller to any Sub-Processor, or onward by any Sub-Processor.

**UK IDTA** means the International Data Transfer Agreement issued by the UK Information Commissioner in accordance with section 119A(1) of the Data Protection Act 2018, as amended, updated or replaced from time to time by the UK Information Commissioner in accordance with the Data Protection Act 2018.

**UK Transfer** means a Restricted Transfer from the UK.

**EU Transfer** means a Restricted Transfer from the EU.

1.2 The terms "controller", "data subject", "data protection impact assessment", "data protection officer", "personal data", "processor", "processing" and similar will have the meanings ascribed to them in the EU General Data Protection Regulation 2016/679 (GDPR) as it forms part of the law of England and Wales by virtue of section 3 of the European Union (Withdrawal) Act 2018 (the UK GDPR).

1.3 In addition to the terms defined in paragraph 1.1 above, the terms as defined in the Terms and Conditions shall apply to this Annex 1.

1.4 To the extent of any inconsistency or conflict between the provisions of the Terms and Conditions and this Annex 1, the provisions of this Annex 1 shall prevail.

#### 2. General Obligations.

2.1 Each party acknowledges and agrees that in respect of the processing of Customer Personal Data by Seller, Buyer shall be the controller and Seller shall be the processor.

2.2 Seller shall:

2.2.1 only process Customer Personal Data on behalf of Buyer as necessary for the provision of the Goods and in accordance with the instructions set out in the Order or other written instructions received from Buyer from time to time (the **Instructions**);

2.2.2 comply with its obligations under Data Protection Laws when processing Customer Personal Data;

2.2.3 prior to carrying out any Instruction from Buyer, notify Buyer if, in Seller's reasonable opinion, such Instruction is likely to result in a breach of Data Protection Laws;

2.2.4 at its own cost, assist and fully co-operate with Buyer to ensure Buyer's compliance with its obligations under Data Protection Laws, including, by:

(a) completing and reviewing data protection impact assessments;

(b) assisting Buyer to implement measures to mitigate against any data protection risks;

(c) providing any information or assistance requested by Buyer to respond to a data subject request in accordance with Data Protection Laws including: (i) providing a copy of Customer Personal Data and details of the processing carried out by Seller; and (ii) deleting and/or rectifying Customer Personal Data; and

(d) assisting with any enquiries or complaints from a Supervisory Authority or data subject relating to Customer Personal Data;

2.2.5 notify Buyer promptly (but, in any event, within 24 hours) should it:

(a) receive any correspondence from a Supervisory Authority, including a notice of any complaint made to a Supervisory Authority or any finding by a Supervisory Authority in relation to its processing of personal data, whether in respect of Customer Personal Data or otherwise;

(b) be under a legal obligation to process Customer Personal Data, other than under the Instructions of Buyer, in which case it shall inform Buyer of the legal obligation, except to the extent the law prohibits it from doing so; or

(c) become aware of any circumstance which may cause Seller to breach its data protection obligations or which may cause either party to breach Data Protection

Laws;

2.2.6 notify Buyer promptly (but, in any event, within 3 days) should it receive a:

- (a) request from a data subject to exercise of their rights under Data Protection Laws in respect of Customer Personal Data; or
- (b) a complaint or any other correspondence from a data subject in respect of Customer Personal Data.

### 3. Due Diligence.

3.1 Seller warrants and undertakes to Buyer that:

- 3.1.1 it has completed all onboarding and supplier due diligence questionnaires and forms made available to Seller (the **Due Diligence**) to the best of its knowledge and with its best efforts;
- 3.1.2 the Due Diligence is accurate and will remain accurate for the duration of its processing of Customer Personal Data; and
- 3.1.3 where any proposed change to the way in which it processes the personal data will affect or alter any answers given in the Due Diligence it will promptly notify Buyer of any such change prior to such changes taking effect and that it will work with Buyer to assess the impact (if any) of such proposed change.

3.2 If Buyer considers that as a result of any changes notified to it in accordance with paragraph 3.1.3 above, the protections given to Customer Personal Data will be reduced, Seller will at its own cost make any changes reasonably required by Buyer to ensure that the standard of protection provided in respect of Customer Personal Data is not lower than the standards set out in the original Due Diligence.

3.3 In the event that any such changes reasonably required by Buyer (in accordance with paragraph 3.2 above) cannot be agreed by the parties or Seller refuses to make such changes, Buyer shall have the right to immediately terminate the Agreement.

3.4 Seller acknowledges that Buyer will rely on the contents of the Due Diligence, in particular to assess the impact of any Restricted Transfer of Customer Personal Data.

### 4. Security.

4.1 When processing Customer Personal Data, Seller shall take all necessary technical and organisational precautions and measures to preserve the security, confidentiality, integrity, availability, and resilience of Customer Personal Data and to prevent any unlawful processing, accidental or unlawful destruction, loss, alteration or unauthorised disclosure of or access to Customer Personal Data, taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of the data subjects. These shall include the security measures set out in Buyer's security standard made available to Seller (the **Security Measures**).

4.2 Seller shall test:

- 4.2.1 the Security Measures regularly (and, in any event, at least every six months) to assess the effectiveness of the measures in ensuring the

security, confidentiality, integrity, availability and resilience of Customer Personal Data;

4.2.2 all back up facilities containing Customer Personal Data regularly (and, in any event, at least quarterly).

4.3 Seller shall:

4.3.1 carry out checks regularly and, in any event, at least annually, to ensure that the Security Measures continue to provide an appropriate level of security;

4.3.2 maintain written records of all security testing carried out in accordance with paragraph 4.3.1 above and shall make such records available to Buyer on request;

4.3.3 not combine or aggregate Customer Personal Data with any third party data unless approved in writing by Buyer; and

4.3.4 ensure that the storage of Customer Personal Data is logically separated from all other third party data unless such aggregation of data is authorised by written agreement between the parties.

### 5. Personnel

5.1 Seller shall:

5.1.1 take reasonable steps to ensure the reliability of any of its employees, agents and Sub-Processors who have access to Customer Personal Data;

5.1.2 ensure that only those of its employees, agents and Sub-Processors who need to have access to Customer Personal Data are granted such access to Customer Personal Data and only for the purposes of the performance of its obligations under this agreement or any other written instructions received from Buyer from time to time; and

5.1.3 ensure that the employees, agents and Sub-Processors who have access to Customer Personal Data:

- (a) are informed of the confidential nature of Customer Personal Data and are subject to appropriate contractual obligations of confidentiality;
- (b) undergo training in Data Protection Laws and in the care and handling of personal data; and
- (c) comply with Seller's obligations under this Data Processing Agreement.

### 6. Sub-Processors.

6.1 Seller shall not provide any Sub-Processor with access to or otherwise permit any Sub-Processor to process Customer Personal Data unless:

6.1.1 the detail of the Sub-Processor(s) is listed in the Order; or

6.1.2 Buyer provides prior written approval.

6.2 Before any Sub-Processor approved in accordance with paragraph 6.1 commences any processing of Customer Personal Data, Seller shall:

- 6.2.1 undertake due diligence, equivalent to the Due Diligence, on such Sub-Processor and shall provide a copy of such due diligence to Buyer on request; and
  - 6.2.2 enter into contractually binding data processing provisions equivalent to those in place between Seller and Buyer under this Data Processing Agreement which shall remain in place for the duration of the Sub-Processor's processing of Customer Personal Data.
- 6.3 Seller shall notify Buyer in advance of any intended changes to its Sub-Processors. Buyer shall be entitled in its absolute discretion to object, within 30 days of Seller's notification of any intended changes, to any such proposed change before it takes effect.
- 6.4 If Buyer exercises its right to object in accordance with paragraph 6.3:
- 6.4.1 Seller shall use reasonable efforts to find a replacement proposed Sub-Processor and shall provide details of such Sub-Processor to Buyer for approval in accordance with this paragraph 6.4; and
  - 6.4.2 if Seller cannot find an appropriate replacement Sub-Processor, or if the change will adversely affect the provision of the Goods, Buyer shall be entitled to terminate the Agreement with immediate effect.
- 6.5 Seller shall remain liable for the actions and omissions of any Sub-Processors as if those actions and omissions were its own.
- 7. Personal Data Breach Notification.**
- 7.1 Seller shall notify Buyer promptly (and in any event no later than 24 hours after discovery) if it becomes aware of any actual, suspected or threatened unauthorised exposure, access, disclosure, processing, use, communication, deletion, revision, encryption, reproduction or transmission of any component of Customer Personal Data, unauthorised access (physical or otherwise) to Customer Personal Data or any loss of, damage to, corruption of or destruction of such Customer Personal Data (**Personal Data Breach**).
- 7.2 The notification in paragraph 7.1 shall include details of the:
- 7.2.1 nature of the Personal Data Breach, including the categories and approximate number of Data Subjects and records concerned;
  - 7.2.2 contact at Seller who will liaise with Buyer concerning the Personal Data Breach;
  - 7.2.3 likely consequences of the Personal Data Breach; and
  - 7.2.4 remediation measures being taken or proposed to be taken to mitigate and contain the Personal Data Breach.
- 7.3 In the event of a Personal Data Breach:
- 7.3.1 Seller shall provide updates as required by Buyer;
  - 7.3.2 Seller shall, at its own cost, comply with any remediation actions required by Buyer;
  - 7.3.3 Buyer shall, in its sole discretion, determine whether and in what form to provide notification to any data subject, any third party or a Supervisory Authority;
- 7.3.4 Seller shall not notify any data subject, any third party or Supervisory Authority unless such notification by Seller is required by law or is otherwise approved by Buyer in writing; and
- 7.3.5 without prejudice to Buyer's other rights and remedies, Seller shall reimburse Buyer for costs incurred in providing notice to data subjects of a Personal Data Breach as well as the cost of any credit monitoring services, credit protection services, credit freezes, credit fraud alerts and/or similar services as required to be provided to the affected data subjects by law.
- 7.4 If, following a Personal Data Breach, Customer Personal Data is corrupted, lost or degraded sufficiently as to be unusable Seller shall, at its own cost, carry out such remedial action to restore Customer Personal Data as Buyer may reasonably require (without prejudice to Buyer's other rights or remedies for such a breach).
- 8. Data Transfers.**
- 8.1 Seller will not make or permit any Restricted Transfer of Customer Personal Data unless Buyer provides prior written approval.
- 8.2 Seller will at its own cost, perform or procure the performance of a transfer risk assessment (for UK Transfers) or a transfer impact assessment (for EU Transfers) which complies with the most recent applicable guidance from the relevant Supervisory Authority (**Transfer Assessment**), and provide the Transfer Assessment to Buyer, for Buyer's consideration. Any approval of Restricted Transfers shall be at the sole discretion of Buyer.
- 8.3 Seller will work with Buyer to review and amend the Transfer Assessment if, in Buyer's opinion, the Transfer Assessment completed by Seller or its Sub Processors is not sufficient or adequate.
- 8.4 To the extent that any additional measures are required to ensure the compliance of the Restricted Transfer with Data Protection Laws, the parties shall cooperate to promptly put in place such measures.
- 8.5 In the event of an approved EU Data Transfer the EU SCCs (accompanied by the relevant detail required in the pro-forma EU SCCs, which shall be detailed in the Order) shall be incorporated into and form part of the Agreement.
- 8.6 In the event of an approved UK Transfer, the IDTA (accompanied by the relevant detail required in the pro-forma IDTA, which shall be detailed in the Order) shall be incorporated into and form part of the Agreement .
- 8.7 In the event of an approved Restricted Transfer being made by a Sub Processor, Seller will ensure that it puts in place such contractual transfer mechanism as may be required under the Data Protection Laws to govern that Restricted Transfer, such as implementing the applicable EU SCCs or IDTA into its agreements with Sub-Processors.
- 8.8 The parties agree to supplement the EU SCCs or the IDTA as applicable with those additional contractual measures as set out in the Order.
- 8.9 In the event of a conflict between: (i) the EU SCCs or IDTA (ii) the terms of this Data Processing Agreement; or (iii) any other terms of the Agreement, the terms of

the EU SCCs or IDTA as applicable shall apply.

Processors (as applicable).

## **9. Rights Of Audit.**

- 9.1 In addition to any provision pertaining to audit and/or recording keeping in the Agreement, Seller shall provide all necessary information and assistance to Buyer in order for Buyer to verify Seller's (and each Sub-Processor's) compliance with its obligations under the Agreement and Data Protection Laws including to allow Buyer, its advisors or its representatives to:
- 9.1.1 access Seller's premises on reasonable notice;
  - 9.1.2 inspect and make copies of any relevant records; and
  - 9.1.3 inspect, test and audit, all facilities, premises, equipment, systems, documents and electronic data relating to the processing of Customer Personal Data by or on behalf of Seller.
- 9.2 Without prejudice to Buyer's other rights and remedies, if the audit reveals that Seller has not complied with the terms of the Agreement, Seller shall promptly remedy such non-compliance by taking any steps reasonably requested by Buyer.
- 9.3 Each party shall bear its own costs of complying with this paragraph 9.3, unless the audit reveals any material non-compliance with the terms of the Agreement or Data Protection Laws by Seller, in which case Seller shall reimburse Buyer's (or another auditor's) reasonable costs and expenses associated with the audit (including, without limitation, legal costs).

## **10. Return/Deletion Of Data.**

- 10.1 If any part of Customer Personal Data is no longer needed by Seller for the purposes of the performance of its obligations under the Agreement or any other Instructions or where the Agreement has been terminated or expired for whatever reason, at Buyer's direction, Seller shall:
- 10.1.1 securely return Customer Personal Data to Buyer; and/or
  - 10.1.2 securely delete such Customer Personal Data from Seller's software and/or hardware systems; and/or
  - 10.1.3 procure that Customer Personal Data is securely deleted from all of the software and/or hardware systems of Seller's employees, agents or Sub-Processors (as applicable),
- unless it is required to retain Customer Personal Data to comply with Applicable Law. In such case Seller shall provide written details of Customer Personal Data it is retaining and the legal requirement for such retention.
- 10.2 If, for any reason Buyer does not give Seller directions within a reasonable time of termination or expiry of the Agreement, Seller shall:
- 10.2.1 securely return Customer Personal Data to Buyer;
  - 10.2.2 securely delete such Customer Personal Data from Seller's software and/or hardware systems; and
  - 10.2.3 procure that Customer Personal Data is securely deleted from all of the software and/or hardware systems of Seller's employees, agents or Sub-