

2021-02 Updates to Terms of Service

Clarifications

Re-writing of the introductory/background section to add clarity to the scope and definitions of "Supplier", "Customer" and "Agreement":

<i>Existing Terms</i>		<i>Updated Terms</i>	
<p>We are Equin Limited of Unit G, Pattern Shop, Trevoarn, Hayle, Cornwall, England, TR27 4EZ (the Supplier). Our registered company number is 06347232.</p> <p>A. The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet (the Customer) on a pay-per-use basis for the purpose of tracking pupil assessments and academic development.</p> <p>B. The Customer wishes to use the Supplier's service in its education operations.</p> <p>The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this Agreement.</p>		<p>We are Equin Limited (the "Supplier"), a company registered in England and Wales with company number 06347232, whose registered office is at Unit G, Pattern Shop, Trevoarn, Hayle, Cornwall, England, TR27 4EZ.</p> <p>A. The Supplier has developed certain software applications which it makes available to subscribers via the internet on an annual subscription basis, for the purpose of tracking pupil assessments and monitoring progress and academic development.</p> <p>B. The Customer wishes to use the site at insighttracking.com and any related websites, mobile sites or applications, our services (where applicable), Documentation and any software provided thereunder in its education operations.</p> <p>C. The Supplier has agreed to provide, and the Customer has agreed to purchase and have made available to it, the Supplier's service subject to the terms and conditions on this page, together with the documents referred to within it (the "Agreement").</p>	

Amendments/additions to the definitions in clause 1.1, to add clarity in cases where the Customer is a Multi Academy Trust or Academy:

<i>Existing Terms</i>		<i>Updated Terms</i>	
"Active Pupils"	those pupils currently enrolled at the Customer's school;	"Active Pupils"	those pupils currently enrolled with the Customer.
N/A		"Customer"	the School, Academy, Multi Academy Trust or other legal entity who purchases Services from the Supplier.

Amendments to the definitions in clause 1.1, to change the referred to site to the top-level domain and include hyperlinks:

<i>Existing Terms</i>		<i>Updated Terms</i>	
"Documentation"	the documents made available to the Customer by the Supplier online via www.insighttracking.com or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.	"Documentation"	the documents made available to the Customer by the Supplier online via insighttracking.com or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.
"Services"	the subscription services provided by the Supplier to the Customer under this Agreement via www.insighttracking.com/app/login or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.	"Services"	the subscription services provided by the Supplier to the Customer under this Agreement via insighttracking.com or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.
"Support Services Policy"	the Supplier's policy for providing support in relation to the Services as made available at www.insighttracking.com/support or such other website address as may be notified to the Customer from time to time.	"Support Services Policy"	the Supplier's policy for providing support in relation to the Services as made available at www.insighttracking.com/support or such other website address as may be notified to the Customer from time to time.

Amendment to clause 3 to correct errors in clause numbering:

<i>Existing Terms</i>	<i>Updated Terms</i>
3.1 Subject to the Customer purchasing the Subscriptions in accordance with clause 9.1, the restrictions set out in this clause 2 and the other terms and conditions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.	3.1 Subject to the Customer purchasing the Subscriptions in accordance with clause 9.1, the restrictions set out in this clause 3 and the other terms and conditions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.
3.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or	3.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or

Documentation, other than as provided under this clause 2; and	Documentation, other than as provided under this clause 3; and
3.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.	3.6 The rights provided under this clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

Amendment to clause 9.5 to specify that notice shall be "written"

<i>Existing Terms</i>	<i>Updated Terms</i>
9.5 The Supplier shall be entitled to increase the Subscription Fees and/or the support fees payable pursuant to clause 4.3 at the start of each Subscription Period upon 90 days' prior notice to the Customer and Schedule 1 shall be deemed to have been amended accordingly.	9.5 The Supplier shall be entitled to increase the Subscription Fees and/or the support fees payable pursuant to clause 4.3 at the start of each Subscription Period upon 90 days' prior written notice to the Customer and Schedule 1 shall be deemed to have been amended accordingly.

Addition of clause 15.5.5 to state that written confirmation of deletion of Customer Data will be provided:

<i>Existing Terms</i>	<i>Updated Terms</i>
N/A	15.5.5 Where the Supplier destroys or otherwise disposes of Customer Data in accordance with clause 15.5.3, it shall provide written notice to the Customer confirming this within 30 days of such destruction or other disposal.

Amendment to clause 18 to better reflect how we manage the rollout of changes to our Terms of Service as a Software-as-a-Service system:

<i>Existing Terms</i>	<i>Updated Terms</i>
18. Variation: No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).	<p>18.1 The Supplier may revise these Terms of Service at any time by amending this page. Where the Supplier intends to make any amendments to the Terms of Service, it shall provide written notice including details of the changes at least 30 days prior to making them.</p> <p>18.2 In the event that the Customer objects to the proposed changes notified in accordance with Clause 18.1, the is entitled to terminate this Agreement and receive a pro-rata refund for the remaining time in the Subscription Period. For the avoidance of doubt, if the Customer continues to avail of the Services after any such notification this constitutes an affirmation of the new terms.</p>

Amendment to Schedule 1 to clarify the determination of Subscription Fees in cases where the Customer is purchasing Subscriptions for more than one school; to link to a pricing page rather than specifying costs and to reference special arrangements:

<i>Existing Terms</i>	<i>Updated Terms</i>								
<p>Schedule 1 – Subscription Fees</p> <p>The Subscription Fees are determined by the number of Active Pupils in the Software on the date a quote is generated.</p> <p>The Subscription Fees are calculated as follows:</p> <table border="1"> <thead> <tr> <th>Pupils</th> <th>Cost per Year</th> </tr> </thead> <tbody> <tr> <td>1 - 99</td> <td>£400 + VAT</td> </tr> <tr> <td>100 - 399</td> <td>£4/pupil + VAT</td> </tr> <tr> <td>400+</td> <td>£1600 + VAT</td> </tr> </tbody> </table> <p>Support Fees</p> <p>The Subscription Fees include support as detailed in the Support Services Policy. There are no additional Support Fees.</p>	Pupils	Cost per Year	1 - 99	£400 + VAT	100 - 399	£4/pupil + VAT	400+	£1600 + VAT	<p>Schedule 1 – Subscription Fees</p> <p>The Subscription Fees are determined by the number of Active Pupils in the Software on the date a quote is generated.</p> <p>The Subscription Fees are calculated as detailed at www.insighttracking.com/pricing. Publicised prices may be subject to otherwise agreed discounts and promotions, which may include “grandfathered” Subscription Fees (where a Customer continues to benefit from old pricing models).</p> <p>Support Fees</p> <p>The Subscription Fees include support as detailed in the Support Services Policy. There are no additional Support Fees.</p>
Pupils	Cost per Year								
1 - 99	£400 + VAT								
100 - 399	£4/pupil + VAT								
400+	£1600 + VAT								

Amendment of the retention information in Schedule 3.2, to add clarity and better reflect our processes:

<i>Existing Terms</i>	<i>Updated Terms</i>
Retention: Until Customer terminates this Agreement.	Retention: Until 30 days after this Agreement terminates, according to clause 15.2 and clause 15.5.3.

Offers and Mobile Use

Addition of new clauses regarding competitions, promotions and mobile use (numbering of existing and new clauses to be updated accordingly:

<i>Existing Terms</i>	<i>Updated Terms</i>
N/A	<p>29. Offers</p> <p>From time to time, we (or selected third parties) may include promotions, votes, competitions, or</p>

	<p>other offers via the Services. Each such offer shall be subject to its own express terms.</p> <p>30. Mobile Use Standard network charges apply to your access to the Services via mobile. You may incur additional charges from your network operator according to your contract.</p>
--	---

Indemnity

Inclusion of new clauses to make explicit the exclusion of certain regulatory fines from our indemnity clauses:

<i>Existing Terms</i>	<i>Updated Terms</i>
<p>N/A</p>	<p>13.6 Subject to Clause 14 generally,</p> <p>13.6.1 the Supplier indemnifies the Customer, without financial limit (but in the appropriate proportion only), in respect of any monetary penalty imposed by the ICO on the Customer which arises from the Supplier's failure to comply with its data processing obligations under clause 5, or Applicable Data Protection Laws, provided that the parties agree that the actions or omissions which led to that penalty being opposed are wholly or partially attributable to the Supplier.</p> <p>13.6.2 If any dispute arises in relation to the Supplier's liability under clause 13.6.1 which cannot be resolved by the parties negotiating in good faith, a Specialist will be appointed by agreement between the parties, as appropriate having regard to the nature of the dispute or difference in question.</p> <p>13.6.3 Any dispute over the type of Specialist appropriate to resolve the dispute, or the identity of the Specialist, may be referred at the request of either party to the President or next most senior available officer of the Law</p>

	<p>Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 13.6.2.</p> <p>13.6.4 The Specialist is to act as an independent expert and is to have regard to all representations and evidence before it when making its decision, which is to be in writing, and which must provide reasons for the decision.</p> <p>13.6.5 The responsibility for the costs of referring a dispute to a Specialist under this clause 13.6, including costs connected with the appointment of the Specialist, the Specialist's own costs and other professional costs of any party in relation to a dispute, will be decided by the Specialist.</p> <p>The Specialist's decision will (save in the case of fraud or manifest error) be final and binding on the parties.</p>
--	---

Pricing

Updates to Schedule 1 to record new subscription fees. These include a removal of the lower pricing cap for schools with less than 100 pupils, and details of the two subscription levels available:

<i>Existing Terms</i>	<i>Updated Terms</i>
<p>Schedule 1 – Subscription Fees</p> <p>1. Subscription Fees</p> <p>The Subscription Fees are determined by the number of Active Pupils in the Software on the date a quote is generated.</p> <p>The Subscription Fees are calculated as follows:</p>	<p>Schedule 1 - Subscription Fees</p> <p>1. Subscription Fees</p> <p>The Subscription Fees are determined by the number of Active Pupils in the Software on the date a quote is generated and the subscription level chosen.</p>

Pupils	Cost per Year	<p>The Subscription Fees, effective from 1 January 2021, are calculated as follows:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th colspan="2" style="text-align: center;">Insight Essentials</th> </tr> <tr> <th style="text-align: center;">Pupils</th> <th style="text-align: center;">Cost per Year</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1 - 399</td> <td style="text-align: center;">£3/pupil + VAT</td> </tr> <tr> <td style="text-align: center;">400+</td> <td style="text-align: center;">£1200 + VAT</td> </tr> </tbody> </table> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th colspan="2" style="text-align: center;">Insight Plus</th> </tr> <tr> <th style="text-align: center;">Pupils</th> <th style="text-align: center;">Cost per Year</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1 - 399</td> <td style="text-align: center;">£4/pupil + VAT</td> </tr> <tr> <td style="text-align: center;">400+</td> <td style="text-align: center;">£1600 + VAT</td> </tr> </tbody> </table> <p style="text-align: center;">2. Support Fees</p> <p>The Subscription Fees include support as detailed in the Support Services Policy. There are no additional Support Fees.</p>	Insight Essentials		Pupils	Cost per Year	1 - 399	£3/pupil + VAT	400+	£1200 + VAT	Insight Plus		Pupils	Cost per Year	1 - 399	£4/pupil + VAT	400+	£1600 + VAT
Insight Essentials																		
Pupils	Cost per Year																	
1 - 399	£3/pupil + VAT																	
400+	£1200 + VAT																	
Insight Plus																		
Pupils	Cost per Year																	
1 - 399	£4/pupil + VAT																	
400+	£1600 + VAT																	
1 - 99	£400 + VAT																	
100 - 399	£4/pupil + VAT																	
400+	£1600 + VAT																	

Support Fees

The Subscription Fees include support as detailed in the Support Services Policy. There are no additional Support Fees.

MIS Link

Update to Notes in Insight Schedule 3.2, to include that pupil records can now be uploaded and maintained via a third-party MIS linking service. The reference to Seq is removed, as this is specified in more detail in Schedule 3.5:

<i>Existing Terms</i>	<i>Updated Terms</i>
Notes: Admin users upload pupil records from either CTF, Excel document, or manual direct entry via web form. They keep records up-to-date by the same process. Seq logs may contain UPNs for debugging user and system issues.	Notes: Admin users upload pupil records from either a third-party MIS linking service, CTF, Excel document, or manual direct entry via web form. They keep records up-to-date by the same process.

Optional Data Collected

Addition of "Address" to the list of optional data which can be recorded in Insight Schedule 3.2. Storing pupil addresses is necessary for schools who want to generate Common Transfer Files containing statutory data, which can be sent straight to their Local Authority.

Addition of "Customer-defined notes and files" to the list of optional data which can be recorded in Insight Schedule 3.2, to correct an omission:

<i>Existing Terms</i>	<i>Updated Terms</i>
<p>The following data can optionally be recorded as well:</p> <ul style="list-style-type: none"> • Ethnicity • EAL status • FSM history • SEN history • Service child status • In-care status • Attendance summaries • Customer-defined groups 	<p>The following data can optionally be recorded as well:</p> <ul style="list-style-type: none"> • Address • Ethnicity • EAL status • FSM history • SEN history • Service child status • In-care status • Attendance summaries • Customer-defined groups • Customer-defined notes and files

Data Protection

Amendments/additions to the definitions in clause 1.1, and a re-writing of Clause 5, to bring the Terms into line with the situation following our departure from the EU.

<i>Existing Terms</i>		<i>Updated Terms</i>	
"Data Protection Legislation"	i. unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then	"Applicable Laws"	means: a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom. b) To the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject.
		"Applicable Data Protection Laws"	means:

	ii. any successor legislation to the GDPR or the Data Protection Act 1998.		<p>a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.</p> <p>b) To the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.</p>
"Customer Data"	the data inputted or supplied by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services, including but not limited to the personal data (as defined in Data Protection Legislation) of pupils and staff of the Customer.	"Customer Data"	the data inputted or supplied by the Customer, Authorised Users, or which the Supplier processes in connection with this agreement, in the capacity of a processor on behalf of the Customer, for the purpose of using the Services or facilitating the Customer's use of the Services, including but not limited to the personal data (as defined in Data Protection Legislation) of pupils and staff of the Customer.
N/A		"EU GDPR"	the General Data Protection Regulation ((EU) 2016/679).
N/A		"ICO"	the Information Commissioner's Office
N/A		"Purpose"	the purposes for which the Customer Personal Data is processed, as set out in clause 5.5(a)
N/A		"Specialist"	a person qualified to act as an expert in relation to disputes arising under clause 13.6 having not less than five years' professional experience

		in the area to which the dispute relates.
N/A	"UK GDPR"	has the meaning given to it in the Data Protection Act 2018.

Existing Terms:

5. Customer Data and Data Protection

- 5.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 5.2 The Supplier shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy available at Schedule 4, as such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in its Back-Up Policy. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).
- 5.3 The Supplier shall, in providing the Services, comply with its Privacy Notice relating to the privacy and security of the Customer Data, available at www.insighttracking.com/privacy or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by the Supplier in its sole discretion.
- 5.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 5.5 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation). Schedule 3 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data (as defined by Data Protection Legislation) and categories of data subject (as defined by Data Protection Legislation).
- 5.6 Without prejudice to the generality of clause 5.5, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Data to the Supplier for the duration and purposes of this agreement.
- 5.7 Without prejudice to the generality of clause 5.5, the Supplier shall, in relation to any Customer Data processed in connection with the performance by the Supplier of its obligations under this agreement:
 - 5.7.1 process that Customer Data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union

or by the laws of the European Union applicable to the Supplier to process Customer Data (**Applicable Laws**). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Customer Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

- 5.7.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Customer Data and against accidental loss or destruction of, or damage to, Customer Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Customer Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Customer Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 5.7.3 ensure that all personnel who have access to and/or process Customer Data are obliged to keep the Customer Data confidential; and
- 5.7.4 not transfer any Customer Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - a. the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - b. the data subject has enforceable rights and effective legal remedies;
 - c. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Customer Data that is transferred; and
 - d. the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Customer Data;
- 5.7.5 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 5.7.6 notify the Customer without undue delay on becoming aware of a Customer Data breach;
- 5.7.7 at the written direction of the Customer, delete or return Customer Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Customer Data; and
- 5.7.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 5.

- 5.8 The Customer consents to the Supplier appointing the third party processors as detailed at paragraph 4 of Schedule 3 as third party processors of Customer Data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 5.8.
- 5.9 Either party may, at any time on not less than 30 days' notice, revise this clause 5 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

New Terms:

5. DATA PROTECTION

- 5.1 For the purposes of this clause 5, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.
- 5.2 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 5.3 The parties acknowledge that for the purposes of the Applicable Data Protection Laws, the Customer is the controller and the Supplier is the processor. Schedule 3 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data (as defined by Applicable Data Protection Laws) and categories of data subject (as defined by Applicable Data Protection Laws).
- 5.4 The Customer shall retain all rights, title and interest in and to all Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 5.5 By entering into this agreement, the Customer consents to (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by the Supplier in connection with the processing of Customer Personal Data, provided these are in compliance with the then-current version of the Supplier's privacy notice available at www.insighttracking.com/privacy (**Privacy Notice**) or such other website address as may be notified to the Customer from time to time. In the event of any inconsistency or conflict between the terms of the Privacy Notice and this agreement, the Privacy Notice will take precedence.
- 5.6 Without prejudice to the generality of clause 5.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to the Supplier for the duration and purposes of this agreement.
- 5.7 Without prejudice to the generality of clause 5.2 the Supplier shall, in relation to Customer Personal Data:

- (a) process that Customer Personal Data only as agreed between the parties, unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Customer Processor Data, the Supplier shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer on important grounds of public interest. The Supplier shall inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Legislation;
- (b) implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures and which measures may include, where appropriate, pseudonymising and encrypting Customer Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Customer Data can be restored in a timely manner in the event of any incident, and by the Supplier regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it;
- (c) ensure that any personnel engaged and authorised by the Supplier to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- (d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
- (f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the agreement unless the Supplier is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this clause 5.7(f) Customer Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
- (g) maintain records to demonstrate its compliance with this clause 5 and allow for reasonable audits by the Customer or the Customer's designated auditor, for this purpose, on reasonable written notice.

5.8 The Customer hereby provides its prior, general authorisation for the Supplier to:

- (a) appoint processors to process the Customer Personal Data, including those processors listed in Schedule 3, provided that the Supplier:
 - (i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on the Supplier in this clause 5;
 - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier.
 - (b) transfer Customer Personal Data outside of the UK as required for the Purpose, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).
- 5.9 The Supplier shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy available at Schedule 4, as such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in its Back-Up Policy. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).
- 5.10 Either party may, at any time on not less than 30 days' notice, revise this clause 5 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).