

## **STANDARD TERMS & CONDITIONS**

### **1. Definitions and Interpretation**

1.1 The following capitalised terms shall have the following meanings in this agreement:

<b>“Data Protection Legislation”</b>	means, for such time as they are in force in England and Wales, the DPA, the GDPR and all related legislation which may supplement, amend or replace them and which relates to the protection of individual’s rights in their personal data and the protection of their privacy;
<b>“DPA”</b>	means the Data Protection Act 1998;
<b>“End Date”</b>	shall have the meaning given to it on the Quotation;
<b>“Equipment”</b>	shall have the meaning given to it in the Quotation (and all references herein to Equipment shall include any flight-casing or similar provided by UP);
<b>“Fee”</b>	shall have the meaning given to it on the Quotation;
<b>“GDPR”</b>	means Regulation (EU) 2016/679 and/or such legislation as may give effect to its terms in England and Wales;
<b>“Personal Data”</b>	has the meaning set out in section 1(1) of the DPA and, from the time of its implementation into law in England and Wales the meaning set out in Article 4(1) of the GDPR, and for the purposes of this agreement means Personal Data provided by one party to this agreement to the other;
<b>“Processing” and “Process”</b>	have the meaning set out in section 1(1) of the DPA and, from the time of its implementation into law in England and Wales the meaning set out in Article 4(2) of the GDPR;
<b>“Quotation”</b>	shall mean the quotation sheet provided by UP in respect of the relevant Equipment hire;
<b>“Start Date”</b>	shall have the meaning given to it on the Quotation;
<b>“Risk Period”</b>	shall mean a period from the date of actual collection by the Client (on an item of Equipment by item of Equipment basis) and continuing thereafter for so long as the relevant item of Equipment is in the possession, custody or control of the Client and until the Equipment is returned to UP in accordance with clause 2.6 below;
<b>“Term”</b>	shall mean the period commencing upon the Start Date and continuing thereafter until the End Date, unless terminated sooner in accordance with the terms of this agreement;
<b>“UP Personnel”</b>	shall mean the representatives of UP (whether employees, contractors or otherwise) furnished by UP to the Client in accordance with the terms hereof;
<b>“UP Premises”</b>	shall mean UP’s premises at Global Infusion Court, Preston Hill, Chesham, England, HP5 3FE or any other location in the UK reasonably directed by UP.

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

1.3 References to clauses and schedules are to the clauses and schedules of this agreement.

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

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

### **2. Hire, Collection and Return**

2.1 UP will hire the Equipment to the Client during the Term subject to the terms and conditions of this agreement.

- 2.2 If UP agrees to provide transportation services, UP agrees to delivery/collect at the agreed time accounting for all reasonable actions within their control. If the Client collects, UP will make the goods available for collection at the prior agreed date & time. If the Client fails to collect at the designated time UP may require the Client to reschedule the date & time.
- 2.3 Subject to clause 8 below, the Client shall retain the Equipment from the commencement of the Risk Period and return all Equipment, at the Client's sole cost, to UP at the UP Premises by no later than 17:00 on the End Date.
- 2.4 UP shall be entitled to substitute any or all items of Equipment for substantially similar items.
- 2.5 UP shall ensure that all Equipment shall be in good working order at the commencement of the Risk Period.
- 2.6 All Equipment shall be returned in the same working order as it was when the Risk Period commenced and the Client shall be responsible for any costs necessary to return the Equipment to the same working order as it was when the Risk Period commenced (including replacement value if necessary).

### **3. Ownership, Risk, Insurance & Freight**

- 3.1 The Equipment shall remain the sole property of UP at all times and the Client shall have no right, title or interest in or to the Equipment (save the right to possession, transport and use of the Equipment in accordance with and subject to the terms and conditions of this agreement). The Client shall not cover, deface or remove any UP branding, logos or labels on the Equipment or flight-casing (or similar).
- 3.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Client from the commencement of the Risk Period. The Equipment shall remain at the sole risk of the Client during the Risk Period.
- 3.3 During the Risk Period, the Client warrants that it shall, at its own expense, obtain and maintain (a) insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, flood, theft or accident, high or low temperature damage, moisture/water damage, and such other similar risks as UP may from time to time reasonably nominate in writing; (b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as UP may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and (c) insurance against such other or further risks relating to the Equipment as may be required by law (in any relevant country), together with such other insurance as UP may from time to time consider reasonably necessary and advise to the Client. All insurance policies procured by the Client shall be endorsed to provide UP with written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall name UP on the policies as a loss payee in relation to any claim relating to the Equipment. The Client shall be responsible for paying any excess due on any claims under such insurance policies. If the Client fails to effect or maintain any of the insurances required under this agreement, UP shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Client. The Client shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to UP and proof of premium payment to UP to confirm the insurance arrangements.
- 3.4 The Client shall ensure that all Equipment will be transported and maintained in first class touring/freight transport with first class protection against loss, damage or destruction by fire, flood, theft or accident, high or low temperature damage, moisture/water damage, and such other similar risks as UP may from time to time reasonably nominate in writing. Where Equipment is to be transported by sea, the Client will ensure adequate silica bags (or equivalent) are utilised (and provide evidence of the same upon request).
- 3.5 The Client shall give immediate written notice to UP in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Client's possession or use of the Equipment.
- 3.6 Notwithstanding anything to the contrary contained herein, where UP provide any recordable media (including without limitation hard drives, SD cards or CDs) as part of the Equipment, UP shall not be responsible for the performance thereof (or any failure thereof) or the loss or damage to any content thereon. Any such content should be removed by the Client prior to returning the relevant Equipment but if any content remains, UP shall not be responsible for such content and shall be entitled to delete it.

### **4. The Client's Obligations**

- 4.1 The Client shall during the Risk Period:
- 4.1.1 ensure that the Equipment is kept in a suitable environment, used only for the purposes for which it is designed;
- 4.1.2 take such steps (including compliance with all safety and usage instructions provided by UP) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained;

- 4.1.3 maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was at the commencement of the Risk Period including replacement of damaged and lost parts, and shall make good any damage to the Equipment;
  - 4.1.4 make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment without the prior written consent of UP;
  - 4.1.5 keep UP fully informed of all material matters relating to the Equipment;
  - 4.1.6 at all times keep the Equipment in the possession or control of the Client;
  - 4.1.7 permit UP or UP's duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
  - 4.1.8 not to locate the Equipment in close proximity to any laser beams or in close proximity to excessive amounts of haze fluid or smoke (and for such purposes "close proximity" and "excessive amounts" shall be as reasonably advised by UP);
  - 4.1.9 not, without the prior written consent of UP, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
  - 4.1.10 not without the prior written consent of UP, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building, save as may be required for the safe installation of the Equipment at the relevant venues. If the Equipment does become affixed to any land or building as aforesaid then the Equipment must be capable of being removed without material injury to such land or building (or the Equipment) and the Client shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify UP against all losses, costs or expenses incurred as a result of such affixation or removal;
  - 4.1.11 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of UP in the Equipment and, where the Equipment has become affixed to any land or building, the Client must take all necessary steps to ensure that UP may enter such land or building and recover the Equipment both during the Term and the Risk Period and for a reasonable period thereafter;
  - 4.1.12 not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Client shall notify UP and the Client shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify UP on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
  - 4.1.13 not use the Equipment for any unlawful purpose;
  - 4.1.14 not do or permit to be done anything which could invalidate the insurances referred to in clause 3; and
  - 4.1.15 obtain and pay for any and all visas, licences, duties and clearances necessary to transport the Equipment into and use the Equipment in any relevant country.
- 4.2 The Client acknowledges that UP shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment by the Client or otherwise caused by the Client or its officers, employees, agents and contractors and the Client undertakes to indemnify UP on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Client to comply with the terms of this agreement.
- 4.3 Where UP Personnel are to be provided in accordance with the Quotation, all use, maintenance, setting up and taking down, repairs, replacements, alterations etc. shall only be undertaken under the supervision and at the instruction of the UP Personnel.
- 4.4 The Client warrants that any Personal Data relating to UP Personnel that is Processed by it further to this agreement shall only be used to enable the Client to receive and the UP Personnel to perform the services detailed in the Quotation and in this agreement.
- 4.5 The Client warrants that it will at all times comply with all applicable Data Protection Legislation requirements, including without limitation the obligations set out in the Data Protection Schedule.

## 5. UP's Obligations

- 5.1 UP warrants that the Equipment shall be of satisfactory quality and fit for the purposes previously agreed by the parties and be free from defects. If a material defect in the Equipment manifests itself during the Term, UP shall use all reasonable endeavours to remedy such defect or promptly replace the relevant item of Equipment, provided that:
- 5.1.1 the Client notifies UP of any such defect in writing (email to suffice) within twenty four (24) hours of the defect occurring (or of the Client becoming aware of the defect or the Client being reasonably expected to become aware of the defect);
  - 5.1.2 UP is permitted to make a full examination of the alleged defect;
  - 5.1.3 the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than UP's authorised personnel;
  - 5.1.4 the defect did not arise out of any information, design or any other assistance supplied or furnished by the Client or on its behalf; and
  - 5.1.5 the defect is directly attributable to defective material, workmanship or design.

5.2 Insofar as the Equipment comprises or contains equipment or components which were not manufactured or produced by UP, the Client shall be entitled only to such warranty or other benefit as UP has received from the manufacturer.

5.3 The parties agree that UP shall provide the services of such UP Personnel as is set out in the Quotation to ensure that the Equipment is operated, set up, taken down and maintained correctly. The UP Personnel will be available at the times set out in the Quotation (subject to reasonable breaks and downtime). All reasonable costs and expenses of the UP Personnel providing services to and travelling with the Client shall be the Client's sole responsibility including without limitation reasonable accommodation, travel and subsistence costs and expenses (but specifically excluding any wages or salary which shall be the responsibility of UP). The UP Personnel shall be entitled to the same standard of accommodation, travel and subsistence as the Client's other staff and crew which shall not be less than reasonable and the UP Personnel shall, unless approved by UP in writing, travel with and stay with the Client's other staff and crew.

5.4 UP warrants that it will at all times comply with all applicable Data Protection Legislation requirements, including without limitation the obligations set out in the Data Protection Schedule.

## **6. Payment & Cancellation**

6.1 The Client shall make payment of the Fee in accordance with the payment schedule set out in the Quotation. If no payment schedule is set out in the Quotation then the Fee shall be payable one hundred percent (100%) on the earlier of (a) the date of this agreement; and (b) the Start Date.

6.2 All sums shall be paid in the currency set out in the Quotation (or, if none, then in pounds sterling (£)). All sums are exclusive of VAT (and similar) which shall be payable by the Client in addition thereto. All sums shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6.3 If the Client fails to make a payment due to UP under this agreement by the due date, then, without limiting UP's remedies, the Client shall if requested pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Such interest will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

6.4 Time is of the essence with respect to all payments to be made by the Client pursuant to this clause 6.

6.5 The Client shall be entitled to cancel this agreement by written notice to UP at any time prior to the Start Date provided that, notwithstanding such cancellation, the following proportions of the Fee shall remain payable:

- 6.5.1 If UP receives notice of such cancellation at least sixty (60) days prior to the Start Date, then only fifty percent (50%) of the Fee shall be payable (and any excess already paid shall be promptly refunded by UP net of any transfer costs).
- 6.5.2 If UP receives notice of such cancellation less than sixty (60) days but at least thirty (30) days prior to the Start Date, then only seventy five percent (75%) of the Fee shall be payable (and any excess already paid shall be promptly refunded by UP net of any transfer costs).
- 6.5.3 If UP receives notice of such cancellation less than thirty (30) days prior to the Start Date, then the Fee shall remain payable in full.

## **7. Limit of Liability**

- 7.1 Without prejudice to clause 7.2 below, UP's maximum aggregate liability for breach of this agreement (including any liability for the acts or omissions of UP's employees, agents and subcontractors including the UP Personnel (if any)), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed the Fee.
- 7.2 Nothing in this agreement shall exclude or in any way limit (a) either party's liability for death or personal injury caused by its own negligence; (b) either party's liability for fraud or fraudulent misrepresentation; or (c) any other liability which cannot be excluded by law. Without prejudice to the foregoing, neither party shall be liable under this agreement for any loss of profit, loss of revenue, loss of business or indirect or consequential loss or damage, in each case, however caused, even if foreseeable.
- 7.3 This agreement sets forth the full extent of UP's obligations and liabilities in respect of the Equipment and its hiring to the Client. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on UP except as specifically stated in this agreement. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within this agreement, whether by statute, common law or otherwise, is expressly excluded.

## **8. Termination, Consequences of Termination & Force Majeure**

- 8.1 UP may terminate this agreement (including the Term) with immediate effect by giving written notice to the Client if:
- 8.1.1 the Client fails to pay any amount due under this agreement on the due date for payment and remains in default (i.e. funds have not been received in cleared funds) as at the date fourteen (14) days after being notified to make such payment;
  - 8.1.2 the Client commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of seven (7) days after being notified to do so;
  - 8.1.3 the Client repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion of UP that the Client's conduct is inconsistent with the Client having the intention or ability to give effect to the terms of this agreement;
  - 8.1.4 the Client suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;
  - 8.1.5 the Client commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
  - 8.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Client other than for the sole purpose of a scheme for a solvent amalgamation of the Client with one or more other companies or the solvent reconstruction of the Client;
  - 8.1.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Client;
  - 8.1.8 the holder of a qualifying floating charge over the assets of the Client has become entitled to appoint or has appointed an administrative receiver;
  - 8.1.9 a person becomes entitled to appoint a receiver over the assets of the Client or a receiver is appointed over the assets of the Client;
  - 8.1.10 a creditor or encumbrancer of the Client attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Client's assets and such attachment or process is not discharged within fourteen (14) days;
  - 8.1.11 any event occurs, or proceeding is taken, with respect to the Client in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 8.1.4 to 8.1.10 (inclusive);  
or
  - 8.1.12 the Client suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business (save as a result of a "force majeure" event which shall be subject to clause 8.5).
- 8.2 If the Equipment, in UP's reasonable opinion (or the opinion of any relevant insurer(s)), is damaged beyond repair, lost, stolen, seized or confiscated, such event shall be deemed a material irremediable breach by the Client.
- 8.3 Upon termination of this agreement by UP in accordance with clause 8.1 above:
- 8.3.1 UP's consent to the Client's possession of the Equipment shall terminate and the Client shall, at the Client's sole cost, return all the Equipment to the UP Premises within fourteen (14) days and, without prejudice to UP's other rights and remedies, if the Client fails to do so, UP may, by its authorised representatives, without

notice and at the Client's sole expense, retake possession of the Equipment and for this purpose may enter any premises at which the Equipment is located; and

8.3.2 the Client shall pay to UP on demand (a) such proportion of the Fee that has fallen due as at the date of termination in accordance with clause 6 (to the extent not already paid) and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 6.3 above; (b) a sum equal to the balance of the Fee not already paid that would (but for the termination) have been payable if the agreement had continued to the end of the Term; (c) any costs and expenses incurred by UP in recovering the Equipment and/or in collecting any sums due under this agreement (including any storage, insurance, repair, transport and reasonable legal costs); and (d) any reasonable cost in repairing the Equipment which is returned (fair wear and tear excepted) or replacing the Equipment which is not (save to the extent such costs are incurred as a direct result of the acts or omissions of UP Personnel).

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

8.5 Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for more than fourteen (14) days, either party may terminate this agreement by giving seven (7) days' written notice to the other party. In the event this agreement is terminated by either party as aforesaid, and in full and final settlement (of either party's claims), the Client shall, at the Client's sole cost, return all the Equipment to the UP Premises within thirty (30) days and, if the Client fails to do so, UP may, by its authorised representatives, without notice and at the Client's sole expense, retake possession of the Equipment and for this purpose may enter any premises at which the Equipment is located, and the Client shall pay to UP on demand:

8.7.1 either (a) such proportion of the Fee that has fallen due as at the date of termination in accordance with clause 6 (to the extent not already paid), together with the next instalment of the Fee which is due following the date of termination (and for such purposes the sums set out in clauses 6.1 and 6.2 shall be deemed one instalment); or (b) fifty percent (50%) of the Fee (to the extent not already paid), whichever is the greater, together with any other sums due but unpaid at the date of such demand and any interest accrued pursuant to clause 6.3 above;

8.7.2 any costs and expenses incurred by UP in collecting any sums due under this agreement (including any reasonable legal costs);

8.7.3 any costs and expenses incurred by UP in recovering the Equipment and/or in collecting any sums due under this agreement (including any storage, insurance, repair, transport and reasonable legal costs); and

8.7.4 any reasonable cost in repairing the Equipment which is returned or replacing the Equipment which is not.

## **9. Notices**

9.1 Any notice or other document required to be given under this agreement or any communication between the parties with respect to any of the provisions of this agreement shall be in writing and be deemed duly given if signed by or on behalf of the party or if appropriate a duly authorised officer of the party giving the notice and if left at or sent by first-class prepaid record letter to the address of the party receiving the notice as set out at the head of this agreement or as notified between the parties.

9.2 Any such notice shall be deemed to be given and received by addressee:

9.2.1 if personally delivered at the time the same is left at the address of the party being served; or

9.2.2 if sent by post two (2) days following the date of posting (if posted within the United Kingdom) but otherwise seven (7) days after the date of posting.

## **10. Assignment**

10.1 The Client may not assign, sub-license or otherwise dispose of any part of the Client's rights or obligations under this agreement without UP's prior written consent, which shall not be unreasonably withheld or delayed (and any purported assignment or disposition in violation of the foregoing shall be void).

10.2 UP may assign, sub-license or otherwise dispose of any part of UP's rights or obligations under this agreement as UP sees fit provided that UP shall remain primarily liable for its obligations hereunder unless and until any assignee enters into a written covenant with the Client to fulfil all of UP's obligations hereunder.

## **11. Miscellaneous**

- 11.1 Notwithstanding any other provision in this agreement a person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this agreement.
- 11.2 This agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby irrevocably submit to the exclusive jurisdiction of the English courts.
- 11.3 The parties hereby confirm that this agreement embodies all the terms agreed between the parties relating to the Client's hiring of Equipment from UP, and the transactions hereby contemplated, and that it supersedes all previous agreements arrangements and understandings between them and that neither party is entering into this agreement in reliance upon any representation or warranty not expressly set out herein. This agreement shall not be varied other than by a written document signed by both parties.
- 11.4 This agreement shall not be deemed to constitute a partnership of joint venture or contract of employment between the parties.
- 11.5 If any provision of this agreement should be held to be invalid or in any way unenforceable it shall be to that extent severed and the remaining provisions shall not in any way be affected or impaired and this agreement shall be construed so as to give effect to the intent of the parties and, to the extent possible, this agreement shall continue to govern their mutual rights and obligations notwithstanding severance.
- 11.6 A waiver of a breach of any of the provisions of this agreement shall not be construed as a continuing waiver of other breaches of the same or other provisions hereof.
- 11.7 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 11.8 This agreement may be executed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same instrument. Executed signature pages of this agreement transmitted electronically in a Portable Document Format (PDF) or similar shall be treated as originals, fully binding and with full legal force and effect, and the parties waive any rights they may have to object to such treatment.

## DATA PROTECTION SCHEDULE

### 1. Data Protection

- 1.1 For the purpose of this schedule, in addition to the definitions set out in the main body of this agreement, the following terms shall have the following meanings:
- (a) **Data Controller:** shall have the meaning of 'data controller' set out in section 1(1) of the DPA and, from the time of its implementation into law in England and Wales the meaning set out in Article 4(7) of the GDPR or the equivalent clause of such legislation which may implement the same in the UK.
  - (b) **Data Processor:** shall have the meaning of 'data processor' set out in section 1(1) of the DPA and, from the time of its implementation into law in England and Wales the meaning of 'processor' set out in Article 4(8) of the GDPR or the equivalent clause of such legislation which may implement the same in the UK.
  - (c) **Data Subject:** an individual who is the subject of Personal Data.
  - (d) **EEA:** means the European Economic Area and also includes the United Kingdom whether or not it is a member of the European Economic Area.

### 2. Independent Data Controllers

- 2.1 UP and the Client agree that for the purposes of Data Protection Legislation that they shall be independent Data Controllers in respect of any Personal Data which is shared in accordance with this agreement.
- 2.2 Each party agree that they will only Process the Personal Data in accordance with the other party's instructions and shall not Process the Personal Data for any purpose other than enabling it to fulfil its obligations pursuant to this agreement or to perform any other activity which it may be expressly authorised to perform by the other party from time to time.
- 2.3 Each party shall take steps to ensure that its officers, employees, agents and contractors are informed of its obligations in relation to Personal Data that it collects, transfers or holds.

### 3. Data Protection Warranties

- 3.1 Each party warrants to the other that it will Process the Personal Data in compliance with all applicable Data Protection Legislation.
- 3.2 Each party warrants that:
- (a) having regard to the reasonably available state of the art of technological development, the nature of the Processing in question, the cost of implementation, and the material risk to the rights of affected Data Subjects, it will take appropriate technical and organisational measures to secure relevant Personal Data against the unauthorised or unlawful Processing and against accidental loss or destruction;
  - (b) it will assist the other party promptly, and, insofar as reasonably possible, in responding to any requests made by any relevant Data Subject which concern the exercise of that Data Subject's rights under the GDPR, subject to the other party reimbursing it for the cost of the same;
  - (c) it will promptly notify the other party, insofar as reasonably possible, of any relevant requests for the disclosure of Personal Data which may be made to it and which it considers that it is legally obliged to respond to;
  - (d) it will promptly report to the other party any actual or suspected data breach concerning Personal Data that relates to this agreement which comes to its attention and shall in relation to such breaches:



- (i) do all such things as reasonably necessary to assist the other party in mitigating the effects of the data breach;
  - (ii) implement any measures necessary to restore the security of any compromised Personal Data;
  - (iii) work with the other party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - (iv) not do anything which may damage the reputation of the other party or that party's relationship with the relevant Data Subjects, save as required by law;
- (e) it will, on request, take reasonable steps to demonstrate to the other party, to the extent that is reasonable given the nature of the Processing in question, that it complies with Data Protection Legislation; and
- (f) it shall hold all Personal Data in confidence, subject to security measures no less rigorous than those which it uses to safeguard its own confidential information

#### **4. Transfers outside the EEA**

4.1 For the purposes of this clause, transfers of Personal Data shall mean any sharing of Personal Data by a party with a third party, and shall include, but is not limited to, the following:

- (a) Storing Personal Data on servers outside the EEA.
- (b) Subcontracting the Processing of Personal Data to Data Processors located outside the EEA.
- (c) Granting third parties located outside the EEA access rights to the Personal Data.

4.2 No party shall transfer Personal Data shared under this agreement in relation to Data Subjects resident in the EEA outside the EEA without ensuring that appropriate safeguards are in place and that the any transfer is lawful under all applicable Data Protection Legislation.

#### **5. Indemnity**

5.1 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its officers, employees, agents or contractors to comply with any of its obligations pursuant to sections 2, 3 or 4 of this schedule. In order to avail itself of this indemnity the claiming party must: promptly notify the indemnifier of any relevant claim of which the indemnified party becomes aware; not make any admission of liability or offer to settle in respect of any relevant claim without the prior written permission of the indemnifier; grant the indemnifier full control of all relevant proceedings on request, and; provide the indemnifier with such assistance in dealing with such claims as it may reasonably request.

5.2 As independent Data Controllers the parties acknowledge that each party will be reliant on the other party from time to time for directions as to the extent to which each party will be entitled to use and Process the relevant Personal Data. Consequently, the party acting on instructions from the other will not be liable to the instructing party for any claim brought by a Data Subject or any fine levied by any relevant regulatory authority which results from any action or omission by it, to the extent that such action or omission resulted directly from the other party's instructions.