

**General Terms (last updated 18 August 2016)**

**1. Scope, Application and Services**

- 1.1 We are IO Data Limited, whose company number is 09730668, and whose registered address is 1 South View Cottages, Old Eldon, Shildon, County Durham, DL4 2QX (“**IO Data**”).
- 1.2 These terms and the documents referred to in them form the contract (“**Agreement**”) governing the use of the IO Data services and portal (“**Service(s)**”).
- 1.3 The document applies to you (“**Customer**”), as the party referred to on the invoice and any persons, third party, agents, sub-contractors, consultants, employees and those acting on your behalf, from the earliest point at which: you agree to procure the Services by confirming to IO Data that you wish to proceed, verbally or in writing, (including without limitation by email or by signing a proposal or similar document); or, access the Services (“**Commencement Date**”).
- 1.4 IO Data shall:
  - (a) install and set-up the Services from the Commencement Date and advise the Customer of the date it will be able to use and access those from (the “**Go Live Date**”); and
  - (b) during the Initial Subscription Term and each Renewal (as defined in clause 6), provide the Services to the Customer on and subject to the terms of this Agreement.
- 1.5 IO Data hereby grants to the Customer a non-exclusive, non-transferable right to use and to permit its employees, agents and independent contractors (“**Authorised Users**”) to use the Services solely for the Customer’s internal business operations.
- 1.6 The Customer shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the Services that:
  - (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - (b) facilitates illegal activity;
  - (c) depicts sexually explicit images;
  - (d) promotes unlawful violence;

- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - (f) in a manner that is otherwise illegal or causes damage or injury to any person or property;
- and IO Data reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer’s access to any material that breaches the provisions of this clause.
- 1.7 The Customer shall not:
    - (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
      - (i) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software (as applicable) in any form or media or by any means; or
      - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
    - (b) access all or any part of the Services in order to build a product or service which competes with the Services; or
    - (c) use the Services to provide services to third parties; or
    - (d) subject to clause 1.7a, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users; or
    - (e) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 1.7.
  - 1.8 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify IO Data.
  - 1.9 The rights provided under this Agreement are granted to the Customer only, and shall not be

considered granted to any subsidiary or holding company of the Customer.

## 2. Payment

- 2.1 On the Commencement Date, IO Data will invoice the Customer for its one-off charges for installation and scheme set-up as detailed in writing by IO Data to the Customer ("**Installation and Setup Fee**").
- 2.2 On the Commencement Date and 30 days prior to the start of each Renewal Period, IO Data will invoice the Customer for the annual subscription fee to access the Services ("**Annual Subscription Fees**").
- 2.3 Additional project management and account management fees may also be payable by the Customer at such frequency as IO Data shall advise to the Customer in writing ("**Management Fees**").
- 2.4 Each and every three calendar months from and including the Go Live Date and as soon as practicable following termination howsoever arising, IO Data will invoice the Customer for its variable fee based on usage calculated quarterly in arrears based on the pence per unit funded on average in each calendar month ("**PPU Fee**").
- 2.5 The Installation and Set Up Fee, Annual Subscription Fees, Management Fees and PPU Fees (together the "**Fees**") are exclusive of VAT which IO Data shall add to its invoices at the appropriate rate.
- 2.6 Invoices are payable in full and in cleared funds within 14 days of the date of the invoice to such bank account nominated in writing by IO Data and are not subject to discounts, reductions, or rebates of any kind, including but not limited to any counterclaim or set-off, except as set out in this Agreement.
- 2.7 Where the Customer fails to make payment on or before the due date, the total fees payable become due and payable upon demand and without prejudice to any other right or remedy it may have, IO Data may:
  - (a) restrict and/or suspend access to the Services until payment is made in full;
  - (b) refuse to complete any other contract between IO Data and the Customer;

- (c) set off any sums paid by the Customer to IO Data in relation to any other contract against the sums owed by the Customer; and
- (d) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of HSBC Holdings plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment.

- 2.8 No refund of any Fees shall be given under any circumstances.
- 2.9 IO Data shall be entitled to recover all reasonable legal costs incurred in connection with the recovery of sums due and outstanding from the Customer.
- 2.10 Where the Services requires IO Data to purchase supplies or services from third parties, IO Data reserves the right to seek payment for this portion of the Services from the Customer in advance.
- 2.11 Time for payment shall be of the essence of the Agreement.
- 2.12 IO Data may, without prejudice to any other rights it may have, set off any liability of the Customer to IO Data against any liability of IO Data to the Customer.
- 2.13 IO Data reserves the right to alter its prices as necessary without prior notice and without affecting existing contractual pricing Agreements.

## 3. Customer's Obligations

- 3.1 The Customer shall:
  - (a) provide IO Data with:
    - (i) all necessary co-operation in relation to this agreement; and
    - (ii) all necessary access to such information as may be required by IO Data (correctly labelled and in the required format);
 in order to provide the Services, including but not limited to security access information and configuration services;
  - (b) comply with all applicable laws and regulations with respect to its activities under this Agreement;

- (c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, IO Data may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that Authorised Users who it authorises to use the Services use the Services in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for IO Data, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by IO Data from time to time; and
- (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to IO Data's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

3.2 The Customer warrants that it has all the requisite power and authority to execute, deliver and perform its obligations under this Agreement.

**4. IO Data's Obligations**

- 4.1 IO Data undertakes that the Services will be performed with reasonable skill and care.
- 4.2 The undertaking at clause 4.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to IO Data's instructions, or modification or alteration of the Services by any party other than IO Data or IO Data's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, IO Data will, at its expense, use all reasonable commercial endeavours to correct

any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 4.1. Notwithstanding the foregoing, IO Data:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

4.3 This Agreement shall not prevent IO Data from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

4.4 IO Data warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

**5. Intellectual Property Rights**

5.1 For the purposes of this Agreement references to "Intellectual Property Rights" shall mean all rights to inventions, patents, copyright and related rights, trade marks and trade names, domain names, rights in set-up, rights of goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how) and any other intellectual property rights, in each case whether registered or unregistered and including without limitation all applications (or rights to apply) for, and renewals or extensions of, such

rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

- 5.2 The Customer acknowledges and agrees that all Intellectual Property Rights in the Services and existing or arising in any materials, know-how, specifications, inventions, processes software, data or information supplied by IO Data under or in connection with this Agreement shall at all times belong to and remain vested in IO Data or its licensors and, save as expressly provided hereunder, no proprietary rights or any other rights whatsoever are assigned, granted or shall otherwise pass to the Customer.
- 5.3 IO Data confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.
- 5.4 The Customer unconditionally agrees that IO Data may use the Customer's logo, name and trade marks in connection with personalising the Services for the Customer and in IO Data's advertising and marketing materials subject to clause 5.5. The Customer hereby licences all such rights to IO Data free of charge and on a non-exclusive worldwide basis to enable IO Data to make use of its logo, name and trademarks as is envisaged by the parties.
- 5.5 IO Data shall submit all advertising and marketing materials which incorporate the Customer's logo, name and/or trade marks to the Customer before publication. The Customer shall have a period of 7 Business Days commencing on the date on which IO Data send the materials in which to notify IO Data as to whether the Customer approves or disapproves the materials, such approval not to be unreasonably withheld or delayed. If the Customer does not communicate its approval or disapproval to IO Data within such 7 Business Day period, the Customer shall be deemed to have approved the materials. For the purposes of this Agreement, a "**Business Day**" is any day other than a Saturday, Sunday or Bank Holiday when the banks in London are open for business.

## 6. Term and Termination

- 6.1 This Agreement shall, unless otherwise terminated in accordance with this clause 6,

commence on the Commencement Date and shall continue for an initial fixed term period of 12 calendar months from and including the Go Live Date ("**Initial Subscription Term**"). Thereafter, this Agreement shall automatically continue for successive fixed term periods of 12 calendar months (each a "**Renewal Period**") unless:

- (a) IO Data notifies the Customer in writing of termination at least 90 calendar days before the end of the Initial Subscription Term or any Renewal Period in which case this Agreement shall terminate upon expiry of the applicable Initial Subscription Term of Renewal Period;
  - (b) the Customer notifies IO Data in writing of termination at least 30 calendar days before the end of the Initial Subscription Term or any Renewal Period in which case this Agreement shall terminate upon expiry of the applicable Initial Subscription Term or Renewal Period;
  - (c) otherwise terminated in accordance with the provisions of this Agreement.
- 6.2 Without prejudice to its other rights and remedies, either party may, by written notice to the other, terminate the Agreement without liability to the other with immediate effect if the other party:
- (a) commits a material breach of the Agreement and shall, in the case of a remedial breach, fail to remedy the same within 14 Business Days of receipt of a written notice from the non-breaching party requiring such remedy.
  - (b) the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
  - (c) the other party 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 or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a

proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this clause 6;
- (k) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

6.3 Without limiting its other rights or remedies, IO Data may terminate this Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount

due under this Agreement on the due date for payment.

- 6.4 IO Data reserve the right to refuse or break a contract without prior notice if it is believed that the Customer has acted contrary to its obligations in clause 3.1.c of this Agreement.
- 6.5 Upon termination of the Agreement, for any reason:
  - (a) all licences granted under this Agreement shall immediately terminate;
  - (b) all Fees under this Agreement shall become immediately due and payable;
  - (c) IO Data shall destroy or otherwise dispose of any Customer Data (as defined in clause 10) in its possession unless IO Data receives, no later than 10 days after the effective date of termination of this Agreement, a written request for the delivery to the Customer of the most recent back-up to the Customer within 30 days of its receipt of such written request, provided that the Customer has at that time paid all Fees and charges outstanding at the date of termination. The Customer shall pay all reasonable expenses incurred by IO Data in returning or disposing of the Customer Data.
- 6.6 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.
- 6.7 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

## 7. Indemnity

- 7.1 The Customer shall defend, indemnify and hold harmless IO Data against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services, provided that:

- (a) the Customer is given prompt notice of any such claim;
- (b) IO Data provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (c) the Customer is given sole authority to defend or settle the claim.

7.2 IO Data shall defend the Customer, its officers, directors and employees against any claim that the Services infringes any United Kingdom patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- (a) IO Data is given prompt notice of any such claim;
- (b) the Customer provides reasonable co-operation to IO Data in the defence and settlement of such claim, at IO Data's expense; and
- (c) IO Data is given sole authority to defend or settle the claim.

7.3 In the defence or settlement of any claim, IO Data may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

7.4 In no event shall IO Data, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- (a) a modification of the Services by anyone other than IO Data; or
- (b) the Customer's use of the Services in a manner contrary to the instructions given to the Customer by IO Data; or
- (c) the Customer's use of the Services after notice of the alleged or actual infringement from IO Data or any appropriate authority.

7.5 The foregoing and clause 8.4 state the Customer's sole and exclusive rights and

remedies, and IO Data's (including IO Data's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## 8. Limitation of Liability

8.1 This clause 8 sets out the entire financial liability of IO Data (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

- (a) arising under or in connection with this Agreement;
- (b) in respect of any use made by the Customer of the Services or any part of them; and
- (c) in respect of any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Agreement.

8.2 Except as expressly and specifically provided in this Agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use. IO Data shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to IO Data by the Customer in connection with the Services, or any actions taken by IO Data at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
- (c) the Services are provided to the Customer on an "as is" basis.

8.3 Nothing in this Agreement excludes or limits IO Data's liability for:

- (a) death or personal injury caused by IO Data's negligence; or
- (b) fraud or fraudulent misrepresentation.

8.4 Subject to clauses 8.2 and 8.3:

- (a) IO Data shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) restitution or otherwise for:
- (i) loss of profits; or
  - (ii) loss of business; or
  - (iii) depletion of goodwill or similar losses; or
  - (iv) loss of anticipated savings; or
  - (v) loss of goods; or
  - (vi) loss of contract; or
  - (vii) loss of production or use; or
  - (viii) loss or corruption of data or information; or
  - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) IO Data's total liability in contract, tort (including without limitation negligence or breach of statutory duty however arising), misrepresentation (whether innocent or negligent), restriction or otherwise, arising in connection with the performance or contemplated performance or lack of performance of this Agreement shall be limited to the total Fees paid by the Customer during the 12 months immediately preceding the date on which the claim arose.

## 9. Confidential Information

- 9.1 For the purposes of this Agreement "**Confidential Information**" means all information disclosed by one party to the other, whether before or after the effective date of the Agreement, that the Customer should reasonably understand to be confidential and includes without limitation all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and any other confidential information concerning IO Data's business or its products or services which the Customer may obtain.
- 9.2 Each party agrees not to use Confidential Information for any purpose other than the purpose for which it is supplied under this

Agreement and agrees not to divulge Confidential Information received from the other party to any of its employees, officers, agents or subcontractors who do not need to know it, and to prevent its disclosure to or access by any third party without the prior written consent of the disclosing party except to its professional advisers or as may be required by law or any legal or regulatory authority.

- 9.3 Each party will use a reasonable degree of care which in any event will not be less than the same degree of care which the receiving party uses to protect its own Confidential Information.
- 9.4 This clause survives termination or expiry of this Agreement however arising.

## 10. Customer Data

- 10.1 The Customer shall own all right, title and interest in and to all of the data inputted by the Customer, Authorised Users, or IO Data on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services (the "**Customer Data**") and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 10.2 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for IO Data to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by IO Data in accordance with its archiving procedure from time to time. IO Data 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 IO Data to perform services related to Customer Data maintenance and back-up).
- 10.3 IO Data shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Customer Data available at [iodata.co.uk](http://iodata.co.uk) 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 IO Data in its sole discretion.

- 10.4 The Customer agrees that IO Data may process its personal data and that of its Authorised Users to enable it to provide the Services to the Customer.
- 10.5 If IO Data processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that the Customer shall be the data controller and IO Data shall be a data processor and in any such case:
- (a) the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and IO Data's other obligations under this Agreement;
  - (b) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to IO Data so that IO Data may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf;
  - (c) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
  - (d) IO Data shall process the personal data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Customer from time to time; and
  - (e) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

#### **11. Third Party Providers**

- 11.1 The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. IO Data makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content

or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not IO Data. IO Data recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. IO Data does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

#### **12. Waiver**

- 12.1 Failure or delay by IO Data in enforcing or partially enforcing any provision of this Agreement is not a waiver by IO Data of any of its rights or remedies and shall not prevent or restrict the further exercise of that or any other right or remedy.
- 12.2 Any waiver by IO Data of any breach by the Customer is not a waiver of any subsequent breach.

#### **13. Assignment**

- 13.1 The Customer shall not, without the prior written consent of IO Data, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.
- 13.2 IO Data may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

#### **14. Alteration of Terms**

- 14.1 IO Data may change the terms of this Agreement from time to time at its absolute discretion without prior notice to the Customer. The Customer agrees that such changes will be binding on it. Any changes will be posted on [iodata.co.uk](http://iodata.co.uk) and will amend and form part of this Agreement. The Customer is responsible for reviewing the [iodata.co.uk](http://iodata.co.uk) site on a regular basis to obtain timely notice of any such changes. This



Agreement and any new agreement entered into after such changes have been posted will include those changes.

- 14.2 No variation can be made to this Agreement by the Customer without the written agreement of IO Data.

### **15. No Partnership or Agency**

- 15.1 Nothing in this Agreement is intended to or will be construed as constituting or evidencing any partnership, contract of employment or joint venture of any kind between either of the parties or as authorising either party to act as agent for the other. Neither party will have authority to make representations for, act in the name or on behalf of or otherwise to bind the other party in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

### **16. Force Majeure**

- 16.1 Neither party will be liable to the other for any delay or non-performance of obligations under this Agreement arising from any cause or causes beyond its reasonable control including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

### **17. Survivorship**

- 17.1 All clauses of this Agreement intended by their nature to survive termination or expiry shall survive the termination or expiry of this Agreement however arising.

### **18. Severability**

- 18.1 The various provisions and sub-provisions of this Agreement are severable and if any provision or identifiable part of it is held to be unenforceable

by any Court of competent jurisdiction then such unenforceability shall not affect the enforceability of the remainder of this Agreement.

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

### **19. Entire Agreement**

- 19.1 This Agreement constitutes the entire agreement between IO Data and the Customer and extinguishes, supersedes and replaces all previous terms and conditions, agreements, promises, assurances, warranties, representation and understandings between the parties, whether written or oral, relating to the Services and subject matter of this Agreement.

- 19.2 Each party acknowledges and agrees that in entering into this Agreement, it does not rely on, and will have no remedy in respect of, any statement, assurance, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

### **20. Notices**

- 20.1 Any notice required to be given pursuant to this Agreement shall be in writing and shall be given by delivering the notice by hand at, or by sending the same by prepaid first class post to the registered office address of a party or such other address as either party notifies to the other from time to time, or by email to [accounts@iodata.co.uk](mailto:accounts@iodata.co.uk) for IO Data and any of the email addresses used by the Customer in relation to the Services with IO Data acting in good faith believes are operational on the date the notice is served. Any notice given according to the above procedure shall be deemed to have been given at the time of delivery (if delivered by hand), the

time of transmission (if delivered by email) and 2 Business Days following postage (if sent by post).

## **21. Third Party Rights**

21.1 No person who is not a party to this Agreement is intended to receive a benefit under, or be entitled to enforce, this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **22. Governing Law**

22.1 This Agreement and any disputes or claims arising out of its subject matter or formation (including without limitation non-contractual disputes or claims are governed by and construed in accordance with English Law.

## **23. Jurisdiction**

23.1 Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).