

FRIGORE LTD TERMS OF ENGAGEMENT OF SUB-CONTRACTORS

These Conditions incorporate the Sub-Contractor Data Processing Agreement, a current copy of which is annexed hereto and should be read and noted.

1. Interpretation

The definitions and rules of interpretation in this clause apply in these Conditions.

1.1 Definitions

“Business Day”	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
“Company”	Frigore Ltd (Registered in England and Wales with Company Number 06075296).
“Completion Date”	the date (if any) specified in the Order as the date by which the Services are to be provided by the Supplier.
“Conditions”	these terms of engagement of sub contractors.
“Contract”	the Conditions, the Order, the Data Processing Agreement, and any other documents referred to in the Order and any other instructions issued to the Supplier by the Company and/or the Customer whether verbal or in writing
“Customer”	the Company’s customer to whom the Services are to be provided.
“Data Processing Agreement”	means the Sub-contractor Data Processing Agreement, as amended, updated or varied from time to time, a copy of the current version of which is annexed hereto.
“Existing Customer”	means a person, company or other organisation to which the Supplier has provided services of the kind provided by the Supplier on behalf of the Company to the Customer pursuant to the Contract in the 12 months immediately preceding the Company first Introducing that person, company or other organisation to the Supplier.
“Group Company”	means any company which is a subsidiary of the Supplier (whether a wholly or partly owned subsidiary) or which is a parent company of the Supplier (whether an immediate parent company, an intermediate parent company or the ultimate parent company) or any other company in which the Supplier or the Supplier’s shareholders own (directly or indirectly) 25% or more of the issued share capital.
“Order”	an order issued by the Company and/or (if permitted by the Company) direct from the Customer (copying in the Company) specifying the details of the Services required and other information relevant to the provision of the Services.

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“Introduce”	(including all derivations thereof including introduces, introducing and introduced) means: (i) the Company requesting that the Supplier supply Services as a sub-contractor of the Company to any person, company or other organisation and/or (ii) the Company making the Supplier aware that a person, company or other organisation requires or may require services of the kind provided by the Supplier and the Supplier subsequently attending a meeting with that person, company or other organisation (whether with the Company or on its own) or the Supplier providing a quote and/or any services to that person, company or other organisation.
“Rates”	the latest rates agreed between the Supplier and the Company from time to time in writing provided that where specific rates have been agreed in writing from time to time in relation to the relevant Customer such agreed rates shall apply.
“Services”	the Services specified in the Order or otherwise agreed between the Company and the Supplier to be provided by the Supplier on behalf of the Company.
“Supplier”	the party to which the Order is issued.
“Termination”	the termination of the Contract however that termination occurs, including termination as a consequence of a breach of the Contract.
“VAT”	Value Added Tax chargeable under English law for the time being and any similar additional tax

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- 1.2 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.3 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.4 A reference to **writing** or **written** includes email but not fax.
- 1.5 Clause headings shall not affect the interpretation of these Conditions.
- 1.6 References to clauses are to the clauses of these Conditions.

2. Basis of Contract

- 2.1. The Order constitutes an offer by the Company to purchase the Services from the Supplier in accordance with these Conditions, and the Data Processing Agreement.
- 2.2. The Order shall be deemed to be accepted on the earlier of:
 - 2.2.1. the Supplier issuing written acceptance of the Order; and
 - 2.2.2. any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence.
- 2.3. These Conditions and the Data Processing Agreement apply to the Contract to the exclusion of any

other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. Supplier's Responsibilities

- 3.1. The Supplier shall provide the Services in accordance with the terms of the Contract and shall allocate sufficient resources to the provision of the Services to enable it to comply with this obligation. The Services will be provided by the Supplier on the Company's behalf to the Customer as directed by the Company. The Supplier acknowledges that there will be no contract between it and the Customer and that it shall not:
 - 3.1.1. deal directly with the Customer without the prior written agreement of the Company in accordance with clause 12.4 of the Conditions; or
 - 3.1.2. make contact with, or send any correspondence to, the Customer direct without the prior written agreement of the Customer. In the event that the Company provides its consent, the Supplier shall comply with any conditions attached to such consent.
- 3.2. The Supplier shall complete the provision of the Services by the Completion Date (where one is specified) or where no Completion Date is specified, within a reasonable period and as regards the time for provision of the Services, time is of the essence. If the Supplier fails to comply with this clause, the Company may (without prejudice to any other rights it may have):
 - 3.2.1. terminate the Contract in whole or in part without liability to the Supplier;
 - 3.2.2. refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
 - 3.2.3. purchase substitute Services from elsewhere;
 - 3.2.4. hold the Supplier accountable for any loss and additional costs incurred; and
 - 3.2.5. have all sums previously paid by the Company to the Supplier under the Contract refunded by the Supplier.
- 3.3. The Supplier shall:
 - 3.3.1. co-operate with the Company and, where appropriate, the Customer in all matters relating to the Services;
 - 3.3.2. comply with all reasonable instructions from the Company, and where appropriate the Customer, as regards the provision of the Services;
 - 3.3.3. use reasonable skill and care in the performance of the Services;
 - 3.3.4. perform the Services in accordance with any service levels specified in the Order or otherwise agreed between the Company and the Supplier.
- 3.4. The Supplier shall:
 - 3.4.1. observe and ensure that all its employees and agents observe all health and safety rules and regulations and any other security requirements that apply at the Customer's premises or any other place where the Services are to be provided;
 - 3.4.2. notify the Company as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and
 - 3.4.3. before the date on which the Services are to start, obtain and at all times maintain all necessary licenses and consents and comply with all relevant legislation in relation to the provision of the Services.
- 3.5. The Supplier confirms that it has all relevant skills and expertise required for the purpose of providing the Services.
- 3.6. Where the Supplier provides Services to more than one Customer such supply shall be treated as a separate Contract in relation to each Customer even if there is not a separate Order for each Customer. The Services provided on behalf of the Company to any particular Customer by the Supplier shall therefore be regarded as a separate Contract that can be severed from any other provision of Services by the Supplier in relation to other Customers. The termination of any Contract in relation to a particular Customer is without prejudice to and shall not affect the continuance of any other Contract between the Company and the Supplier in relation to other Customers save as provided for in clause 11.6.
- 3.7. The Supplier will keep records of all Services provided by it pursuant to each Contract including but not limited to, the Order, proofs of delivery, copy bill of lading and copies of any instructions or complaints from the Customer for at least six years after the completion of the relevant Services.

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- 3.8. The Supplier will provide the Services in its own name and not in the name of the Company unless the Company requests the Supplier to do so in writing. The Supplier will not suggest or imply to the Customer that the Supplier is in any way connected with the Company other than as its sub-contractor.
- 3.9. The Contract shall apply irrespective of which of the Supplier's brand or trade names is used when providing the Services.

4. Company's Obligations

- 4.1. The Company shall:
 - 4.1.1. supply the Supplier with such details as are in the opinion of the Company necessary for the provision of the Services;
 - 4.1.2. co-operate with the Supplier insofar as is reasonable in all matters relating to the Services;
 - 4.1.3. provide such other information as the Supplier may reasonably request and which the Company considers reasonably necessary in order to carry out the Services in a timely manner.

5. Charges and Payment

- 5.1. In consideration of the provision of the Services by the Supplier, the Company shall pay the charges, which shall be calculated in accordance with the Rates.
- 5.2. The Supplier will record any job where it acts as sub-contractor for the Company in its records with the prefix "SCS - SC".
- 5.3. The Company shall be entitled, at its own expense, to review, analyse and / or audit the Supplier's records to ensure the Supplier's compliance with the terms of the Contract. The Supplier shall co-operate with all reasonable requests for information by the Company pursuant to this clause and shall permit the Company to have access to its premises and records during normal office hours for this purpose. The Company shall be entitled to have the records referred to in this clause analysed by an independent third party of its choosing and if the Company elects to do so the Supplier will co-operate with and permit such access to its premises and records to that third party as it would be obliged to provide to the Company.
- 5.4. Unless otherwise agreed in writing between the Company and the Supplier, the Company shall pay each invoice which is properly due and submitted to it by the Supplier within 30 days of the end of the month in which the invoice is issued.
- 5.5. Without prejudice to any other right or remedy it may have, the Company shall be entitled to set off any amount which is at any time owing to or claimed by the Company from the Supplier (or another Group Company) against any amount payable by the Company to the Supplier (or another Group Company) or otherwise claimed from the Company by the Supplier (or another Group Company) in each case, whether under the Contract or otherwise.
- 5.6. The Supplier shall not set off against any sum due to the Company (whether under the Contract or otherwise) any sum due to or claimed by the Supplier (or another Group Company) from the Company (whether under the Contract or otherwise).

6. Quality of Services

- 6.1. The Supplier warrants to the Company that:
 - 6.1.1. the Supplier will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the relevant field;
 - 6.1.2. the Services will be provided in accordance with all applicable legislation from time to time in force, and the Supplier will inform the Company as soon as it becomes aware of any changes in that legislation;
 - 6.1.3. the Services will conform with the instructions in the Order and all other instructions provided by the Company and/or the Customer to the Supplier;
 - 6.1.4. the Supplier will provide at its own expense any materials and equipment required to perform the Services.

- 6.2. The Company's rights under the Contract are in addition to the statutory terms implied in favour of the Company by the Supply of Goods and Services Act 1982 and any other statutes.
- 6.3. The provisions of this clause shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any substituted or remedial services provided by the Supplier.

7. Goodwill

- 7.1. The Supplier shall not act in any way, whether in the course of providing the Services or otherwise, that may cause damage to the reputation or goodwill of the Company and shall procure that its employees, agents, subcontractors and assigns shall not so act.
- 7.2. The Company shall be entitled to terminate the Contract in the event that the Supplier breaches its obligations under clause 7.1 or if the Company considers that any act or omission of the Supplier is damaging to or may damage the Company's goodwill or reputation.
- 7.3. The Supplier will not either during the continuance of the Contract or after its termination for any reason represent itself as connected with the Company.

8. Insurance

- 8.1. During the term of the Contract and for a period of six years thereafter, the Supplier shall maintain in force with a reputable insurance company appropriate insurance sufficient to cover the Supplier's liability to the Company under or in connection with the Contract including adequate goods in transit insurance cover for its liabilities under the Contract and/or under the Convention on the Contract for the International Carriage of Goods by Road ("CMR") (where applicable) and/or any other international convention as applicable to the Services and shall, at the Company's request, produce both the insurance certificates giving details of cover and the receipt for the current year's premiums.
- 8.2. The provisions of this clause 8 shall survive termination of the Contract however arising.

9. Liability of the Company

- 9.1. Other than the obligation to make payment to the Supplier in accordance with the terms of the Contract, in consideration of the provision of the Services, the entire liability of the Company to the Supplier shall be limited to the greater of the agreed price for the provision of the Services (or the relevant part thereof) or the amount of insurance actually available to the Company to meet the claim in question, whether such liability arises in relation to or in connection with or as a result of the breach of the Contract by the Company or otherwise.
- 9.2. Nothing in clause 9.1 shall exclude the Company's liability for fraud or fraudulent misrepresentation or for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors.

10. Confidentiality

- 10.1. The Supplier shall keep in strict confidence all information, documents, data and specifications relating to the Services generally and the Customers ("**Confidential Information**") which have been disclosed to the Supplier by the Company, its employees, agents, consultants or sub-contractors. The Supplier shall not use, disclose or dispose of any such information other than for the purposes of complying with its obligations under the Contract or as required by law. The Supplier acknowledges that the Confidential Information is the property of the Company and shall be kept in safe custody by the Supplier while in its possession.
- 10.2. Each party shall keep in strict confidence all information which it obtains (whether from the other party or otherwise) regarding the business of the other party ("**Information**") and shall not use or disclose the same except for the purpose of complying with its obligations under the Contract. This provision shall not apply to information which is publicly available other than as a result of a breach of this clause. Nothing in this clause shall prevent the disclosure of information to professional advisers for the purpose of seeking advice in connection with the Contract or the Services or disclosure required by law.

10.3. For the avoidance of doubt, the Supplier will not disclose any Confidential Information or any Information (other than as permitted by clauses 10.1 or 10.2) to any third party (including a Group Company) which acquires or expresses an interest in acquiring the business and/or assets of the Supplier or any part thereof with a view to carrying on the business or part thereof previously carried on by the Supplier.

11. Termination

11.1. Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving written notice to the other if:

11.1.1. the other party commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of that party being notified in writing of the breach and requested to remedy the same; or

11.1.2. the other party repeatedly breaches any of the terms of the Contract 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 the Contract; or

11.1.3. the other party suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due; or

11.1.4. the other party enters into or takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, the other party enters into or becomes subject to any analogous procedure in the relevant jurisdiction; or

11.1.5. the other party suspends or ceases or threatens to suspend or cease to carry on all or a substantial part of its business.

11.2. Without limiting its other rights or remedies, either party may terminate the Contract by giving at least 3 months' written notice to the other party.

11.3. The Company may terminate the Contract with immediate effect by giving notice in writing to the Supplier in the event that 25% or more of the voting rights in relation to the Supplier become controlled by (whether directly or indirectly) any company, body, person or organisation which the Company considers to be a competitor or which the Company considers it is undesirable for it to be associated with.

11.4. On Termination for any reason (including termination otherwise than as permitted by the Contract), the Supplier shall:

11.4.1. immediately deliver to the Company all Confidential Information and Information and copies thereof. To the extent that the Supplier has electronic copies of any Confidential Information or Information these shall also be returned to the Company or, at the Company's sole discretion, permanently deleted to the Company's satisfaction;

11.4.2. upon request by the Company, make available for collection by or on behalf of the Company any goods held by the Supplier on behalf of the Company or the Customer and for the avoidance of any doubt the Supplier shall not at any time (whether before or after Termination) have a general or particular lien on any such goods;

11.4.3. upon request by the Company, procure that any subcontractors of the Supplier make available for collection by or on behalf of the Company any goods held by such subcontractors on behalf of the Company or the Customer.

11.5. If the Supplier fails to fulfil its obligation under clause 11.4 then the Company may enter the Supplier's premises and take possession of any such items or goods which should have been returned or made available for collection under clause 11.4. Until they have been returned or repossessed, the Supplier shall be solely responsible for their safekeeping notwithstanding that the Contract may have been terminated.

11.6. For the avoidance of doubt, where the Supplier provides Services in relation to more than one Customer such that, in accordance with clause 3.6, the supply to each Customer is regarded as a separate Contract, any event in relation to a Contract in relation to a particular Customer which

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gives rise to a right to terminate that specific Contract shall entitle the party entitled to terminate all the individual Contracts between the Supplier and the Company. The party entitled to terminate shall not, however, be obliged to terminate all the individual Contracts in relation to each Customer if it does not wish to do so. The party entitled to terminate may terminate only the particular Contract in relation to which the right to terminate has arisen and any other Contracts in relation to other Customers between the Company and the Supplier can continue in force.

12. Supplier Restrictions

12.1. In this clause 12 the following phrases shall have the meanings set out next to them:

- “Restricted Customer” any person, firm or company other than an Existing Customer who at any time during the 12 months prior to Termination was a client or customer of or in the habit of dealing with the Company in relation to the Restricted Services and for whom the Supplier has provided services on behalf of the Company.
- “Restricted Person” anyone employed or otherwise engaged (including as a sub-contractor) by the Company in the 12 months prior to Termination and who was involved in the delivery of any of the Company’s services to any Restricted Customer.
- “Restricted Services” services of the same kind or of a materially similar kind as those provided by the Supplier on behalf of the Company during the 12 months immediately prior to Termination.

- 12.2. During the continuance of the Contract the Supplier will not without the prior written agreement of the Company:
- 12.2.1. offer to provide to the Customer any services of the kind or materially similar to that which the Supplier provides on behalf of the Company to the Customer; or
- 12.2.2. solicit from the Customer work or business of the kind or materially similar to that which the Supplier provides on behalf of the Company to the Customer; or
- 12.2.3. provide to the Customer any services of the kind or materially similar to that which the Supplier provides on behalf of the Company to the Customer; or
- 12.2.4. offer to employ or engage or otherwise endeavour to entice away from the Company any employee, agent or subcontractor of the Company; or
- 12.2.5. employ or engage any employee, agent or subcontractor of the Company.
- 12.3. The Supplier will not at any time in the 12 months after the date of Termination without the Company’s prior written agreement:
- 12.3.1. solicit or endeavour to entice away from the Company the business of a Restricted Customer with a view to providing Restricted Services to that Restricted Customer or offer to provide any Restricted Services to a Restricted Customer; or
- 12.3.2. provide any Restricted Services to a Restricted Customer; or
- 12.3.3. offer to employ or engage or otherwise endeavour to entice away from the Company any Restricted Person; or
- 12.3.4. employ or engage any Restricted Person; or
- 12.3.5. cause or encourage a Restricted Customer to reduce or not do business with the Company.
- 12.4. For any prior written agreement of the Company to be valid in accordance with clause 12.2 or clause 12.3 it must be signed by a director of the Company and specify the Services, Customer and period for which the restrictions in this clause 12 shall not apply. The Company reserves the right to withdraw its agreement at any time, upon which the restrictions in this clause 12 shall continue to apply to the Supplier.
- 12.5. The restrictions imposed on the Supplier by this clause 12 apply to it acting:
- 12.5.1. directly or indirectly; and/or
- 12.5.2. on its own behalf; and/or

- 12.5.3. on behalf of, or in conjunction with, any other firm, company or person whether as an employee, officer, subcontractor, agent or otherwise.
- 12.6. The Company is entitled to enforce any of the restrictions in this clause 12 against the Supplier in respect of any Contract (the same to have the meaning set out in clause 1.1 of these Conditions and as further set out in clause 3.6).
- 12.7. Each of the restrictions in each of the sub sections of this clause 12 is intended to be separate and severable. If any of the restrictions shall be held to be void but would be valid if part of their wording were deleted, such restrictions shall apply with such deletion as may be necessary to make it valid or effective.
- 12.8. The Supplier acknowledges that there is substantial goodwill attached to the Company's customers and recognises therefore that the restrictions set out in this clause 12 are reasonable. The Supplier agrees that as between the Supplier and the Company, the Customers shall belong to the Company. The Supplier further recognises that the restrictions in this clause 12 are reasonable as consideration for the Supplier having been afforded the opportunity to provide the Services which it would not otherwise have had.
- 12.9. Nothing in this clause 12 shall prevent or shall be interpreted as preventing the Supplier providing the Services to the Company pursuant to the Contract during the continuance of the Contract. The supply of the Services by the Supplier under the Contract shall not amount to a breach of this clause 12.
- 12.10. The provisions of clause 12 shall survive Termination and shall continue to apply notwithstanding Termination.

13. Remedies

- 13.1. If any Services are not supplied in accordance with, or the Supplier fails to comply with any terms of, the Contract, the Company shall be entitled (without prejudice to any other right or remedy) to exercise any one or more of the following rights or remedies:
- 13.1.1. to rescind the Contract (and any and/or all other individual contracts between the Company and the Supplier in relation to other Customers); or
- 13.1.2. to refuse to accept the provision of any further Services by the Supplier (whether in relation to the Contract or any other contracts between the Company and the Supplier in relation to other Customers) and to require the immediate repayment by the Supplier of all sums previously paid by the Company to the Supplier under the Contract and/or any other contracts between the Company and the Supplier in relation to other Customers; or
- 13.1.3. to require the Supplier without charge to the Company to carry out such additional work as is necessary to correct the Supplier's failure; and
- 13.1.4. in any case, to claim such damages as it may have sustained in connection with the Supplier's breach (or breaches) of the Contract.

14. Force Majeure

- 14.1. The Company reserves the right to defer the date of performance of or payment for the Services or to terminate the Contract if it is prevented from, or delayed in, carrying on its business by acts, events, omissions or accidents beyond its reasonable control (a Force Majeure Event).
- 14.2. For the purposes of clause 14.1, a Force Majeure Event shall include, but shall not be limited to:
- 14.2.1 any labour or trade dispute, strikes, industrial action or disputes or lock-outs (whether involving the workforce of the Company or any other party);
- 14.2.2 interruption or failure of a utility service of the transport network
- 14.2.3 epidemic or pandemic;
- 14.2.4 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

- 14.2.5 nuclear, chemical or biological contamination or sonic boom;
 - 14.2.6 malicious damage
 - 14.2.7 collapse of buildings, fire, explosion or accident, compliance with any accident;
 - 14.2.8 breakdown of plant or machinery
 - 14.2.9 acts of God, fire, flood, storm, drought, earthquake or other natural disaster
 - 14.2.10 labour shortages
 - 14.2.11 material shortages
 - 14.2.12 disruption to national or international freight services
 - 14.2.13 increased border restrictions and trade embargos
 - 14.2.14 default of suppliers or sub-contractors
 - 14.2.15 any law, order, rule, regulation, direction or any other action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent.
- 14.3. If the Force Majeure Event prevents, hinders or delays either party's performance of its obligations for a continuous period of more than one calendar month, the Company may terminate this agreement by giving one week's written notice to the Supplier.

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- 15. Material adverse change.** The obligations of the Company under this Contract are subject to there being, in its opinion, no event or circumstance arising from the withdrawal of the United Kingdom from the European Union, or the continuation of the COVID-19 or any other epidemic or pandemic which, in its opinion, could materially adversely affect:
- 15.1. the ability of the Company to perform its obligations under this Contract; or
 - 15.2. the ability of suppliers and sub-contractors to perform all or part of the Services; or
 - 15.3. international or domestic freight services.
- In the event that any such event or circumstance could result in a breach by the Company of this Contract, or a delay by the Company in performing, or failure to perform, any of its obligations under this Contract, the Company shall not be liable if such delay or failure results from those events or circumstances.

- 16. Variation**
- Except as regards verbal instructions issued to the Supplier by the Company as regards the Services, no variation of the Contract shall be valid unless it is in writing and signed by a director of the Company and by a director of the Supplier.

- 17. Waiver**
- 17.1. Failure to exercise or any delay in exercising any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.

- 17.2. A waiver (which may be given subject to conditions) of any right or remedy provided under the Contract or by law shall only be effective if it is in writing.
- 17.3. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

18. Severance

- 18.1. If any provision of these Conditions or the Data Processing Agreement (or part of any such provision) is found by any Court or any other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed not to form part of the Contract and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 18.2. If a provision of these Conditions or the Data Processing Agreement (or part of any such provision) is found illegal, invalid or unenforceable, the provision shall apply with a minimum modification to make it legal, valid and enforceable.

19. Entire Agreement

- 19.1. The Contract constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of the Contract.
- 19.2. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty of any person, whether a party to the Contract or not, other than those that are expressly part of the Contract. Each party agrees that the only remedy available to it arising out of or in connection with a representation shall be for breach of contract.
- 19.3. Nothing in this clause shall limit or exclude any liability for fraud.

20. Assignment

- 20.1. The Supplier shall not, without the prior written consent of the Company, assign, sub-contract, transfer, charge, mortgage or deal in any other manner with any or all of its rights or obligations under the Contract.
- 20.2. The Customer may, at any time, assign, transfer, charge, mortgage, sub-contract or deal in any other matter with all or any of its rights or obligations under the Contract.

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21. No Partnership, Agency or Employment

- 21.1. Nothing in the Contract is intended to or shall operate to create a partnership between the parties or to authorise either party to act as agent for the other and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 21.2. The Supplier is an independent contractor and is not an employee of the Company. The Supplier shall indemnify the Company against all costs, claims, losses, damages, liabilities, fines and penalties (**Losses**) (whether such Losses are direct, indirect or consequential and including loss of or reduction in profit, loss of goodwill and loss or depletion of business) arising in connection with or as a result of or in relation to an allegation that the Supplier or any of its employees or agents is an employee of the Company. The Supplier further acknowledges that it is responsible for accounting for any relevant taxes and National Insurance contributions in relation to itself or its employees or agents and the indemnity in this clause shall apply to any claim or liability and associated costs, expenses, fines and penalties against the Company in relation to liability to pay such taxes and contributions.
- 21.3. In the event that the Contract terminates and the Company or a third party supplier (**Third Party Supplier**) thereafter provides the services which were, until termination, provided by the Supplier or by a third party (**Supplier Subcontractor**) on behalf of the Supplier then the Supplier shall indemnify the Company and the Third Party Supplier against any claims, costs, expenses, losses,

damages, fines, penalties or liabilities (**Losses**) incurred by or made against the Company and/or the Third Party Supplier in connection with or pursuant to the Transfer of Undertakings Protection of Employment Regulations 2006 ("**the Regulations**") including: (i) any claims (whether arising pre or post transfer) by employees of the Supplier or a Supplier Subcontractor whose employment transfers to the Company or the Third Party Supplier whether in relation to termination of such employment or otherwise; (ii) any other claims by any party (whether arising pre or post transfer). The Supplier shall also indemnify the Company against any Losses incurred by or made against the Company as a result of or in connection with any claims made by the Third Party Supplier arising in connection with or pursuant to the Regulations (whether arising pre or post transfer).

22. Third Parties

- 22.1. Save in relation to a Third Party Supplier (which shall have rights under clause 21.3 (and shall be permitted to enforce such rights), a person who is not party to the Contract shall not have any rights under or in connection with it.
- 22.2. To the extent that the Supplier, with the prior written consent of the Company, sub-contracts the provision of the Services or any part thereof to any other person, company or other organisation (including any Group Company) the Supplier will procure that such third party performs the Services in accordance with and complies with the terms of the Contract (including clause 12) as if it was a party to the Contract as the Supplier. The Supplier confirms that it is authorised to accept the terms of the Contract on behalf of the Group Companies. The Supplier will indemnify the Company against any costs, claims, liabilities, losses, expenses, fines or penalties incurred by or made against the Company as a result of such third party's failure to comply with the terms of the Contract.
- 22.3. The Supplier will not transfer the whole or any part of its business or assets to a third party (including but not limited to a Group Company) with a view to that third party carrying on the business or part thereof previously carried on by the Supplier without first ensuring that, to the extent that the Company is willing to do so, the third party enters a contract with the Company on the same terms as the Contract.

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23. Notices

- 22.1 All notices required by the Contract shall be given in writing and sent to the address or email address as the parties use for correspondence with each other.
- 22.2 A notice shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or, by email at 9.00 am on the next Business Day after transmission.
- 22.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

24. Governing Law and Jurisdiction

- 24.1. These Conditions and the Contract shall be governed by English law.
- 24.2. Any dispute arising out of these Conditions or the Contract shall, save as provided in clause 24.3, be subject to the exclusive jurisdiction of the English courts.
- 24.3. Notwithstanding clause 24.2, the Company is entitled to require any dispute to be determined by arbitration.
- 24.4. The Company may exercise its rights under clause 24.3 either by itself commencing arbitration in respect of a dispute or by giving written notice to the Supplier requiring a dispute to be determined by arbitration.
- 24.5. In the event that the Company exercises its rights under clause 24.4, the corresponding arbitration

shall be conducted as follows:

- 24.5.1. Where the amount claimed by the claimant is less than £400,000, excluding interest (or such other sum as the Company and Supplier may agree, and subject to clause 24.5.3), the reference shall be to a tribunal of three arbitrators and the arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (**LMAA**) Intermediate Claims Procedure applicable at the date of the commencement of the arbitration proceedings.
- 24.5.2. Where the amount claimed by the claimant is less than £100,000, excluding interest (or such other sum as the Company and Supplier may agree, and subject to clause 24.5.3), the reference shall be to a sole arbitrator and the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure applicable at the date of the commencement of the arbitration proceedings
- 24.5.3. In any case where neither of the LMAA Procedures referred to in clause 24.5.1 and/or clause 24.5.2 apply, the reference shall be to three arbitrators in accordance with the LMAA Terms applicable at the date of the commencement of the arbitration proceedings.

- 25. Data.** Both parties shall comply with the obligations set out in the Data Processing Agreement.
Sub-Contractor Data Processing Agreement

PARTIES

(1) Frigore Ltd (incorporated and registered in England and Wales with company number **06075296**) (“**Company**” or “**Controller**”).

(2) The party whom the Order is issued “**Supplier**” or “**Processor**”).

BACKGROUND

(A) This Sub-Contractor Data Processing Agreement (“**Agreement**”) is the Data Processing Agreement referred to, and defined in, the Sub-contractor Terms and Conditions as agreed between (1) the Company and (2) the Supplier for the engagement of sub-contracted services (“**the Conditions**”). The Agreement, together with the Conditions make up the legally binding Contract between the parties.

(B) All words and expressions defined in the Contract shall, unless the context requires otherwise, bear the same meanings in this Agreement and the interpretation provisions in clause 1 of the Conditions shall be incorporated into and shall apply to the terms of this letter as if such clause (with appropriate amendments so far as to refer to this Agreement) were set out in full in this Agreement. In order to perform the Services, the Supplier will need to Process certain Personal Data on behalf of the Company.

(C) This Agreement sets out the terms, requirements and conditions on which the Processor will Process Personal Data when providing services under the Contract. This Agreement contains the mandatory clauses required by Article 28(3) of the General Data Protection Regulation ((EU) 2016/679) for contracts

between controllers and processors.

(D) The parties shall enter into this Agreement in order to regulate the provision and use of Personal Data that the Processor will be Processing of behalf of the Controller.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement.

1.1 Definitions:

Business Purposes: the services described in the Order or any other purpose specifically identified in *Annex A*.

Data Protection Legislation: all applicable privacy and data protection laws including the General Data Protection Regulation ((EU) 2016/679), Data Protection Act 2018 and any other applicable national implementing laws, regulations, guidelines, codes of practice (whether or not legally binding) and secondary legislation in England and Wales relating to the Processing of Personal Data and the privacy of electronic communications, as amended, replaced or updated from time to time, including the Privacy and Electronic Communications Directive (2002/58/EC) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426).

Data Subject: an individual who is the subject of Personal Data.

Personal Data: means any information relating to an identified or identifiable natural person that is Processed by the Processor as a result of, or in connection with, the provision of the Services; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

Personal Data Breach: a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed.

Processing, Processes and Process: either any activity that involves the use of Personal Data or as the Data Protection Legislation may otherwise define Processing, Processes or Process. It includes any

operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. Processing also includes transferring Personal Data to third parties.

Restricted Transfer: means a transfer of personal data from a data exporter located inside the EEA, and/or, following the exit by the UK from the European Union ('Brexit') the UK, to a data importer located outside the EEA and/or, following Brexit, the UK.

Standard Contractual Clauses: Means the contractual clauses approved by the European Commission for the transfer of data between a Data Controller in the EEA to a Data Controller outside the EEA or the transfer of data between a Data Controller in the EEA to a Data Processor outside the EEA, as may be amended from time to time.

1.2 This Agreement is subject to the terms of the Conditions, and is incorporated into the Contract.

1.3 The Annexes, and any Appendix therein, form part of this Agreement and will have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Annexes.

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1.4 Any reference in this Agreement to 'writing' or similar expressions includes a reference to, electronic mail, letter or other comparable means of communication.

1.5 If any term or provision of this Agreement shall be held to be illegal or unenforceable in whole or in part under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to be part of this Agreement but the remainder of this Agreement shall not be affected.

1.6 In the case of conflict or ambiguity between:

(a) any provision contained in the body of this Agreement and any provision contained in the Annexes, the provision in the body of this Agreement will prevail;

(b) the terms of any accompanying invoice or other documents annexed to this Agreement and any provision contained in the Annexes, the provision contained in the Annexes will prevail;

(c) any of the provisions of this Agreement and the provisions of the Order, the provisions of this Agreement will prevail; and

(d) In the event of any conflict or inconsistency between the terms of this Agreement and the terms of any applicable Standard Contractual Clauses, the terms of the Standard Contractual Clauses shall take precedence.

2. DATA PROTECTION

2.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Agreement is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this Clause 2, Applicable Laws means (for so long as and to the extent that they apply to Frigore Ltd) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.

3. PERSONAL DATA TYPE AND PROCESSING PURPOSES

3.1 Subject to clause 3.2, Frigore Ltd and the Supplier acknowledge that for the purpose of the Data Protection Legislation, Frigore Ltd is the "Controller" and the Supplier is the "Processor".

3.2 The Controller retains control of the Personal Data and remains responsible for its compliance obligations under the applicable Data Protection Legislation, including providing any required notices and obtaining any required consents, and for the Processing instructions it gives to the Processor.

3.3 Annex A describes the subject matter, duration, nature and purpose of Processing and the Personal Data categories and Data Subject types in respect of which the Processor may Process to fulfil the Business Purposes.

4. PROCESSOR'S OBLIGATIONS

3.1 The Processor will:

(a) process that Personal Data only on the documented written instructions of Frigore Ltd unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Personal Data, the Supplier shall promptly notify Frigore Ltd of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying Frigore Ltd;

(b) comply with reasonable instructions notified to it in advance by Frigore Ltd with respect to the processing of the Personal Data.

(c) assist Supply Chain Solution or its customers 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.

4. SECURITY

4.1 The Processor must at all times implement appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Data, and against accidental or unlawful loss, destruction, alteration, disclosure or damage of Personal 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 Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal 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).

4.2 The Processor will treat Personal Data as confidential and ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential.

5. PERSONAL DATA BREACH

5.1 The Processor will notify the Controller without undue delay on becoming aware of a Personal Data Breach.

7. CROSS-BORDER TRANSFERS OF PERSONAL DATA

7.1 Where the Processor is located within the EEA or, following Brexit, the UK, the Processor shall not and shall procure that any sub-processor shall not make a Restricted Transfer unless:

- (a) the Restricted Transfer is made in accordance with the provisions set out in this Agreement; or
- (b) the Processor obtains the Controller's prior written consent.

7.2 Where such consent is granted under clause 7.1, the Processor may only make a Restricted Transfer under the following conditions:

- (a) The Processor has ensured that such transfer is made in compliance with the Data Protection Legislation, including ensuring that there are protections and appropriate safeguards in place in respect of that transfer as may be required under the Data Protection Legislation; and
- (b) The Processor has notified the Controller of the protections and appropriate safeguards in paragraph 7.2(a); and
- (c) The Processor has documented and evidenced the protections and appropriate safeguards in paragraph 7.2(a) above and will allow the Controller access to any relevant documents and evidence, on request.

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7.3 The Standard Contractual Clauses annexed at Annex B to this Agreement shall automatically apply between the parties where:

- (a) the transfer of personal data from the Controller to the Processor is a Restricted Transfer which is prohibited under the Data Protection Legislation in the absence of Standard Contractual Clauses; or
- (b) If the UK leaves the European Union without a withdrawal agreement on the day of exit (or the transitional period under a withdrawal agreement expires before the European Commission has adopted an adequacy decision for the UK).

7.4 For the avoidance of doubt, where the transfer of personal data from the Processor to the Controller is a Restricted Transfer and such transfer is prohibited under the Data Protection Legislation, both parties may agree to vary this agreement to the extent required to put in place such adequate safeguards and protections as may be approved by the relevant regulators, being the Information Commissioner's Office and/ or the European Commission, as applicable, to cover such transfer.

8. SUBCONTRACTORS

The Supplier may not authorise any third party or subcontractor to process the Personal Data.

9. COMPLAINTS, DATA SUBJECT REQUESTS AND THIRD PARTY RIGHTS

9.1 The Processor must, at no additional cost, take such technical and organisational measures as may be appropriate, and promptly provide such information to the Controller as the Controller may reasonably require, enabling the Controller to comply with:

(a) the rights of Data Subjects under the Data Protection Legislation, including subject access rights, the rights to rectify and erase personal data, object to the Processing and automated Processing of personal data, and restrict the Processing of personal data; and

(b) information or assessment notices served on the Controller by any supervisory authority under the Data Protection Legislation.

9.2 The Processor must notify the Controller immediately if it receives any complaint, notice or communication that relates directly or indirectly to the Processing of the Personal Data or to either party's compliance with the Data Protection Legislation.

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9.3 The Processor must notify the Controller promptly without undue delay and within 24 hours if it receives a request from a Data Subject for access to their Personal Data or to exercise any of their related rights under the Data Protection Legislation.

9.4 The Processor will give the Controller its full co-operation and assistance in responding to any complaint, notice, communication or Data Subject request.

9.5 The Processor must not disclose the Personal Data to any Data Subject or to a third party other than at the Controller's request or instruction, as provided for in this Agreement or as required by law.

10. TERM AND TERMINATION

10.1 This Agreement will remain in full force and effect so long as:

(a) the Contract remains in effect; or

(b) the Processor retains any Personal Data related to the Contract in its possession or control (**Term**).

10.2 Any provision of this Agreement that expressly or by implication should come into or continue in force on or after termination of the Contract in order to protect Personal Data will remain in full force and effect.

10.3 The Processor's failure to comply with the terms of this Agreement is a material breach of the Order. In such event, the Controller may terminate any part of the Order authorising the Processing of Personal Data effective immediately on written notice to the Processor without further liability or obligation.

10.4 If a change in any Data Protection Legislation prevents either party from fulfilling all or part of its obligations in accordance with the Order, the parties will suspend the Processing of Personal Data until that Processing complies with the new requirements. If the parties are unable to bring the Personal Data Processing into compliance with the Data Protection Legislation within 10 days they may terminate the provisions of the Order on written notice to the other party.

11. DATA RETURN AND DESTRUCTION

11.1 At the written request of the Controller, the Processor will at the written direction of the Controller, delete or return Personal Data and copies thereof to the Controller on termination of the agreement unless required by Applicable Law to store the Personal Data.

11.2 If any law, regulation, or government or regulatory body requires the Processor to retain any documents or materials that the Processor would otherwise be required to return or destroy, it will notify the Controller in writing of that retention requirement, giving details of the documents or materials that it must retain, the legal basis for retention, and establishing a specific timeline for destruction once the retention requirement ends.

12. RECORDS

12.1 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Agreement.

16. NOTICE

16.1 Any notice or other communication given to a party under or in connection with this Agreement must be in writing and delivered to the individuals identified on the Order.

16.2 [Clause 16.1](#) does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16.3 A notice given under this agreement is not valid if sent by email.

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ANNEX A

PERSONAL DATA PROCESSING PURPOSES AND DETAILS

Subject Matter of Processing:

Frigore Ltd has instructed the Supplier to process elements of personal data to enable the Services to be delivered. The personal data is that of the employees of Supply Chain Solution's customers.

Duration of Processing:

The personal data is to be retained and processed for the duration of this agreement.

Nature of Processing:

- collection
- recording
- organisation
- storage
- dissemination or otherwise making available
- erasure or destruction

Business Purposes:

The Supplier will process personal data about selected employees of Frigore Ltd's customers for the following purposes:

- a) Maintaining and enhancing the Supplier's delivery of the Services (for example, for co-ordinating warehouse drop-offs and collections).
- b) Account management (e.g. maintaining contact with Supply Chain Solution customers for delivery and other business updates).

Personal Data Categories:

- Personal details (name)
- Contact Information (address, work email addresses, phone)

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Data Subject Types:

In order to deliver the Service under the Contract, Frigore Ltd collects personal data from the following categories of data subject: Employees of the customers of Frigore Ltd (where necessary to perform the Contract). Frigore Ltd then passes the personal data to the Supplier (as a sub-processor) to the extent necessary to perform the Contract.

The legal basis for processing Personal Data outside the EEA in order to comply with cross-border transfer restrictions will be:

- Located in a country with a current determination of adequacy; or

- Standard Contractual Clauses between Controller as "data exporter" and Processor as "data importer".

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ANNEX B

DATA CONTROLLER TO DATA PROCESSOR: STANDARD CONTRACTUAL CLAUSES (PROCESSORS)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

Name of the data exporting organization is the Controller under the Agreement

(the data **exporter**)

And

Name of the data importing organisation: the Processor under the Agreement

(the data **importer**)

each a 'party'; together 'the parties',

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Clause 1

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Definitions

For the purposes of the Clauses:

- (a) 'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) 'the data exporter' means the controller who transfers the personal data;
- (c) 'the data importer' means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) 'the sub-processor' means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the

Clauses and the terms of the written subcontract;

(e) 'the applicable data protection law' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

(f) 'technical and organisational security measures' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3

Third-party beneficiary clause

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1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the sub-processor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of the data exporter

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data-processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any sub-processor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

(i) that, in the event of sub-processing, the processing activity is carried out in accordance with Clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

(j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the data importer

The data importer agrees and warrants:

(a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

(d) that it will promptly notify the data exporter about:

(i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;

(ii) any accidental or unauthorised access; and

(iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

(e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

(f)at the request of the data exporter to submit its data-processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

(g)to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

(h)that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;

(i)that the processing services by the sub-processor will be carried out in accordance with Clause 11;

(j)to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

Clause 6

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Liability

- 1.The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.
- 2.If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his sub-processor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.

- 3.If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred

to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.

Clause 7

Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

(a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

(b) to refer the dispute to the courts in the Member State in which the data exporter is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

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Clause 8

Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5(b).

Clause 9

Governing law

The Clauses shall be governed by the law of the Member State in which the data exporter is established, namely England.

Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Sub-processing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.
2. The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established, namely England.
4. The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data-processing services

1. The parties agree that on the termination of the provision of data-processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data-processing facilities for an audit of the measures referred to in paragraph 1.

FINAL DRAFT

Appendix 1

to the Standard Contractual Clauses

This Appendix forms part of the Standard Contractual Clauses.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

Data exporter

The data exporter is (please specify briefly your activities relevant to the transfer):

The data exporter is the Controller under the Agreement, and the activities relevant to the transfer are as set out in the Agreement.

Data importer

The data importer is (please specify briefly activities relevant to the transfer):

The data importer is the Processor under the Agreement, and the activities relevant to the transfer are as set out in the Agreement.

Data subjects

The personal data transferred concern the following categories of data subjects (please specify):

See "Subject Matter of Processing" in Annex A to the Agreement.

Categories of data

The personal data transferred concern the following categories of data (please specify):

See "Personal Data Categories" in Annex A to the Agreement.

Special categories of data (if appropriate)

The personal data transferred concern the following special categories of data (please specify):

No Special Categories of data will be processed as part of this Agreement.

Processing operations

The personal data transferred will be subject to the following basic processing activities (please specify):

See "Nature of Processing" in Annex A to the Agreement.

FINAL DRAFT

Appendix 2

to the Standard Contractual Clauses

This Appendix forms part of the Standard Contractual Clauses.

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):

The Data Importer shall implement appropriate technical and organisational security measures in respect of its processing of personal data. Those technical and organisational security measures shall be appropriate taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons. Such measures may include, as appropriate:

- (a) the pseudonymisation and encryption of personal data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

FINAL DRAFT