



## SOFTWARE - TERMS OF SERVICE

These Terms of Service apply to the provision of Services by Xplor to Client. By executing the Order Form, Client agrees to be bound by the terms of the Order Form and these Terms of Service (together this **Agreement**).

### 1. **DEFINITIONS**

1.1 In this Agreement the following words and expressions have the following meanings unless otherwise defined in the Order Form:

**Acceptable Usage Policy** means the acceptable usage policy in respect of the Solution (as may be updated by Xplor from time to time), located at <https://www.xplortechnologies.com/us/acceptable-use-policy>.

**Additional Services** means the additional services set out in the Order Form (if any).

**Affiliate** means, in relation to an undertaking, a subsidiary undertaking or parent undertaking of that undertaking or any other subsidiary undertaking of any such parent undertaking (where **undertaking**, **subsidiary undertaking** and **parent undertaking** have the meanings given to them in the Companies Act 2006).

**Applicable Law** means all applicable laws, statutes and regulations (including all Data Protection Legislation).

**Change** has the meaning given to it in Clause 8.1.

**Change of Control** means any transaction which results in a person who immediately prior to such transaction did not have Control of Client acquiring Control of Client.

**Change Requirements** has the meaning given to it in Clause 8.2.1.

**Clearances** means all rights, licences, permissions, consents, registrations and other clearances required: (a) to enable Xplor to provide the Services and the Solution; and (b) in respect of the Client Materials in order for Xplor to use them in connection with its obligations under this Agreement.

**Client** means the client set out in the Order Form.

**Client Materials** means any and all equipment, data, information, content, branding and other materials uploaded to the Solution and/or otherwise supplied to Xplor by or on behalf of Client (and/or its Permitted Users) for use in connection with the performance of this Agreement.

**Client Personal Data** means personal data relating to Client, its customers and/or end users.

**Confidential Information** has the meaning given to it in Clause 13.1.1.

**Control** has the meaning given to it in section 1124 of the Corporation Tax Act 2010.

**Data Protection Legislation** means all applicable data protection and privacy laws, including the General Data Protection Regulation (EU) 2016/679, all supplemental, replacement or amending laws to the GDPR, including the Data Protection Act 2018 and UK GDPR (collectively **GDPR**) the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019, and all guidance issued by an applicable supervisory authority relating to personal data.

**Defaulting Party** has the meaning given to it in Clause 12.1.

**Delivery** means arrival at the delivery location agreed in writing between the parties, regardless of any failure by Client to take delivery.

**Early Termination Fees** means the amount equal to the Fees payable per month multiplied by the number of months remaining in the Initial Licence Period or Renewal Period (as appropriate).

**Fees** means the fees and any other charges set out in the Order Form.

**Force Majeure Event** has the meaning given to it in Clause 11.6.

**Go Live Date** means the go live date set out in the Order Form.

**Hardware** means any hardware which will be made available to Client as part of the Additional Services.

**Indemnified Infringement** has the meaning given to it in Clause 9.3.

**Indemnified Party** has the meaning given to it in Clause 9.7.

**Indemnifying Party** has the meaning given to it in Clause 9.7.

**Initial Licence Period** means the initial licence period set out in the Order Form.

**Insolvency Event** means, in respect of a party, the occurrence of one or more of the following events: (a) an inability to pay its debts when they become due; (b) the making of an order, or passing of a resolution, for that person's liquidation, administration, winding-up, or dissolution (apart from for the purposes of a solvent amalgamation or reconstruction); (c) the appointment of an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer over all or any substantial part of the assets of that person which is not discharged within 14 days; (d) the entering into or proposal of any composition or arrangement with that person's creditors generally; and/or anything analogous to any of the events described in (a) – (d) above being suffered by that person in any jurisdiction.

**Intellectual Property Rights** means all intellectual property rights of any nature including: (a) copyright, patents, trade marks, database rights, designs, format rights, inventions, know-how, trade secrets, techniques and confidential information, customer and supplier lists and other proprietary knowledge and information (whether registered or unregistered); (b) applications and all rights to apply for registration for any of the foregoing; and (c) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world in each case for their full term and together with any revivals, renewals or extensions.

**Liabilities** means any and all costs, losses, liabilities, obligations, damages, deficiencies, penalties, fines, interest and expenses.

**Licence Period** means the Initial Licence Period and any Renewal Period(s).

**Order Form** means the order form signed by Xplor and Client in which these Terms of Service are referenced, including any and all Annexes.

**Payment Schedule** means the payment schedule set out in the Order Form.

**Permitted Users** means the employees of Client (and any other category of permitted end user authorised by Client) to be granted access to the Solution, as notified to Xplor by Client reasonably in advance in writing, subject to any limitations set out in the Solution Functionality.

**Proprietary Materials** means all methods, methodologies, products, processes, tools, techniques, databases, know how, software or other materials owned or licensed by Xplor, which are comprised within the Solution or otherwise utilised by Xplor in the performance of this Agreement.

**Renewal Period** has the meaning given to it in Clause 2.2.

**Services** means the Set-Up Services, the Support Services and the Additional Services.

**Set-Up Services** has the meaning given to it in Clause 3.1.

**Solution** means the software solution set out in the Order Form.

**Solution Functionality** means the Solution functionality set out in the Order Form.

**Support Services** means the support services set out in the Order Form (if any).

**Term** has the meaning given to it in Clause 2.1.

**Terminating Party** has the meaning given to it in Clause 12.1.

**Terms of Service** means these terms and conditions, including any and all Schedules and Annexes to the Order Form.

**Third Party Claim** has the meaning given to it in Clause 9.7.

**Third Party Services** has the meaning given to it in Clause 5.5.

**Xplor** means the entity defined as Xplor in the Order Form.

**Year** means each consecutive period of 12 months during the Licence Period.

- 1.2 References to **parties** are to Xplor and Client, each a **party**.
- 1.3 References to **Clauses, Schedules** and **Annexes** are to clauses in and schedules to these Terms of Service and annexes to the Order Form.
- 1.4 Headings are inserted for convenience only and will not affect the construction of this Agreement.
- 1.5 References to **persons** include natural persons, companies and other corporate bodies, unincorporated associations, partnerships, firms and government bodies, governments, states and any other organisations.
- 1.6 The singular includes the plural and vice versa.
- 1.7 Use of the terms **include(s), including, such as** or similar will be construed without limiting the generality of the words preceding those terms.
- 1.8 The terms **controller, data subject, personal data, personal data breach, process, processor** and **supervisory authority** will have the meanings given to them in Article 4 of the GDPR.
- 1.9 In the event of any conflict between the terms of the Order Form and these Terms of Service, the terms of the Order Form will take precedence.

## 2. COMMENCEMENT & DURATION

- 2.1 This Agreement will commence on the date the Order Form is signed by both parties and will continue, unless

terminated earlier in accordance with its terms, until expiry of the Licence Period (the **Term**).

- 2.2 Following the Initial Licence Period, this Agreement will automatically renew for successive periods of 12 months (each a **Renewal Period**) unless either party provides written notice of termination to the other party at least 60 days prior to the expiry of the Initial Licence Period or any Renewal Period.

- 2.3 Xplor will be entitled to increase the Fees payable annually by notifying Client no less than two (2) months prior to such increase. If Client does not agree to the Fee increase, Client may terminate this Agreement without penalty by providing written notice to Xplor within ten (10) days of receiving notice from Xplor notifying Client of an increase to the Fees payable. In such case termination will take effect on and from the date the Fee increase was due to take effect. Otherwise, Client will be deemed to have accepted the Fee increase two (2) months from being notified of it.

## 3. SERVICES

- 3.1 Subject to Client complying with Clause 6 and paying any applicable fees, Xplor will configure and integrate the Solution for use during the Licence Period (the **Set-Up Services**). The parties will work together in good faith to agree a target Go Live Date. If the Set-Up Services have not been completed on or before the target Go Live Date due to the act(s) or omission(s) of the Client then Xplor will be entitled to charge Client its reasonable costs associated with the Set-Up Services to that date on a time and materials basis and any agreed implementation fees will become immediately due and payable without discount.

- 3.2 If applicable, Xplor will provide the Support Services and/or the Additional Services to Client during the Licence Period.

- 3.3 Xplor agrees to provide the Services:

- 3.3.1 in a professional manner, using due skill and care; and

- 3.3.2 using suitably qualified personnel with appropriate experience.

- 3.4 Client acknowledges that unless otherwise explicitly provided in the Order Form, the Solution has not been designed specifically for Client.

- 3.5 Client acknowledges and agrees that the Solution and the Services are not intended to constitute or comprise advisory services of any kind. Client will be solely responsible for establishing that the Solution and the Services are fit for Client's purposes and that their receipt and use comply with its legal obligations. Without limiting the generality of the foregoing, to the extent that Xplor provides Client with any customer terms and conditions, waivers, landing pages, marketing formats or other templates or suggested forms (and/or any similar resources) pursuant to the Services, Client acknowledges and agrees that such documents are provided for illustrative purposes only and are used at Client's sole risk. Client will be solely responsible for obtaining appropriate legal advice in respect of its terms and conditions with its customers, the use and regulatory compliance of such documents and/or any activities undertaken by it using, or otherwise in connection with, the Solution and/or the Services.

- 3.6 Client agrees that its purchase of the Solution and Services is not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments by Xplor regarding future functionality or features.

- 3.7 Notwithstanding any other provision of this Agreement, Xplor may from time to time in its sole discretion withdraw or decommission a product, software, Solution or a Service that you are using and will, if practicable, give you reasonable prior notice of this.
4. **HARDWARE**
- 4.1 Xplor agrees that any Hardware provided by it to Client pursuant to the Additional Services will: (a) comply in all material respects with any description agreed under the Order Form; and (b) be fit for the intended purpose specified in the Order Form.
- 4.2 To the extent that the provision of the Additional Services includes the provision of Hardware for permanent retention by Client:
- 4.2.1 risk in the Hardware will pass to Client on Delivery;
- 4.2.2 title to the Hardware will pass to Client on receipt in full by Xplor of the corresponding Fees; and
- 4.2.3 until title to the Hardware has passed to Client:
- (a) Client will store the Hardware separately from all other goods held by Client so that it remains readily identifiable as Xplor's property;
- (b) Client will not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware;
- (c) Client will maintain the Hardware in satisfactory condition and keep it insured with a reputable insurer for its full price against all risks; and
- (d) if Client is in breach of its payment obligations under this Agreement, Xplor may require Client to deliver up the Hardware and, if Client fails to do so within five (5) days of the request, enter any premises where the Hardware is stored in order to recover it.
- 4.3 The parties acknowledge and agree that any specified Delivery dates are estimates only. Xplor will use reasonable endeavours to meet such Delivery dates and will keep Client reasonably updated as to any required changes. The parties acknowledge that Xplor will be entitled to deliver Hardware in instalments where it deems appropriate. Client will reimburse Xplor for any costs and expenses arising out of Client's failure to take delivery of the Hardware.
5. **ACCESS TO THE PLATFORM**
- 5.1 Subject to Client complying with its obligations under this Agreement, Xplor grants to Client a non-exclusive, non-transferable, non-sub-licensable licence for the Licence Period to access the Solution solely for the purpose of enabling Permitted Users to use the Solution Functionality.
- 5.2 Xplor will provide Permitted Users with access to the Solution, subject to each Permitted User generating a unique username and password. It will be the responsibility of Client to ensure that the Permitted Users keep their usernames and passwords secure and confidential at all times and Client will promptly notify Xplor of any actual or suspected unauthorised disclosure.
- 5.3 Client will:
- 5.3.1 comply, and will ensure that its Permitted Users comply, with the Acceptable Usage Policy; and
- 5.3.2 indemnify Xplor against any and all Liabilities suffered or incurred by Xplor arising out of or in connection with its breach of Clause 5.3.1.
- 5.4 Without limiting Xplor's other rights or remedies, Xplor reserves the right to suspend access to the Solution without liability if at any time Xplor knows or reasonably suspects that Client and/or any Permitted User is in breach of the Acceptable Usage Policy and/or any other term(s) of this Agreement. Client will remain liable for the Fees during any period of suspension of its access under this Clause.
- 5.5 Xplor or third parties may make third party content, data, software, or other functionality available through, or for use in conjunction with, the Solution or otherwise in connection with using the Services (**Third Party Services**). Third Party Services are not Services or part of the Solution Functionality and Xplor makes no warranties of any kind in respect of Third Party Services or other non-Xplor products or services, whether or not they are provided by an Affiliate, compatible with the Solution or otherwise designated as "recommended" or "approved" by Xplor. Any procurement, access or use by Client of a Third Party Service, and any exchange of data between Client and the provider of such Third Party Service, is solely between Client and such provider. Without prejudice to any restriction in this Agreement, if Client enables or installs any Third Party Service for use with the Solution or Services, Client agrees (and confirms that it has the right, power and authority to agree) that Xplor may allow the provider of the Third Party Service to access Client data (including Client Personal Data) as required for the interoperation of that Third Party Service with the Solution, and Xplor is not responsible for any disclosure, modification or deletion of such data resulting from such access. Xplor may restrict or disable access to any Third Party Services that are made available through the Solution or the Services without notice and for any reason, including if the provider ceases to make it available. Client's use of Third Party Services:
- 5.5.1 is entirely at its own risk and Xplor shall have no liability whatsoever in connection with the same; and
- 5.5.2 may be subject to additional terms, conditions and policies applicable to such Third Party Services (such as terms of service or privacy policies of the providers of such Third Party Services).
6. **CLIENT OBLIGATIONS**
- 6.1 Client will:
- 6.1.1 provide such Client Materials as Xplor may reasonably require to perform its obligations under this Agreement (including providing all information Xplor deems necessary to comply with anti-money laundering and sanctions Applicable Laws);
- 6.1.2 provide all Client Materials to Xplor in such timeframes and formats, and via such methods, as Xplor may reasonably require;
- 6.1.3 obtain all necessary Clearances;
- 6.1.4 cooperate fully with Xplor and provide such information, access and assistance as Xplor may reasonably require in the performance of this Agreement;
- 6.1.5 ensure that it meets any dependencies notified by Xplor to Client from time to time (including the minimum technical requirements for user IT equipment, network access and other matters not in Xplor's control);

- 6.1.6 comply with any additional responsibilities of Client set out in the Order Form; and
- 6.1.7 carry out its obligations under this Agreement, and access and use the Solution, in accordance with all Applicable Law, including applicable Data Protection Legislation.
7. **FEES**
- 7.1 Xplor will invoice Client for, and Client will pay, the Fees in accordance with the Payment Schedule.
- 7.2 Without limiting any other right or remedy of Xplor, if Client fails to pay any instalment of the Fees by its due date for payment:
- 7.2.1 Client will pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank Plc's base rate from time to time. Such interest will accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. Client will pay the interest together with the overdue amount;
- 7.2.2 Xplor will be entitled to suspend performance of its obligations under this Agreement without liability until such non-payment is remedied; and
- 7.2.3 Client will pay to Xplor any and all collection costs incurred by Xplor in collection of late payment together with the overdue amount.
- 7.3 In this Agreement all sums payable are stated exclusive of any applicable VAT or other sales tax, which will be payable by Client in addition at the prevailing rate.
- 7.4 Payments by Client to Xplor will be made by electronic transfer to such bank account as specified on the relevant invoice.
- 7.5 Payments by Client to Xplor will be made without deduction or withholding unless required by law. If any deduction or withholding is required by law, Client will pay such additional sum as is required to ensure that the net amount received and retained by Xplor equals the amount that would have been received without such deduction or withholding.
8. **CHANGE CONTROL**
- 8.1 Subject to Clause 8.4, if either party wishes to change the scope or execution of the Services, it will submit details of the requested change (**Change**) to the other in writing.
- 8.2 Where either party requests a Change, Xplor will, within a reasonable time:
- 8.2.1 provide to Client written details of:
- (a) the likely time required to implement the Change;
  - (b) any necessary variations to the Fees arising from the Change; and
  - (c) any other impact of the Change on this Agreement,
- (the **Change Requirements**); or
- 8.2.2 notify Client that such Change is not reasonably practical.
- 8.3 If Client notifies Xplor in writing that it wishes to proceed with any Change under Clause 8.2.1, implementation of such Change will be subject to agreement of the Change Requirements in accordance with Clause 14.9.
- 8.4 The parties acknowledge and agree that Xplor will be entitled to update, upgrade or modify the Solution at its own cost at its discretion provided that no such change will materially diminish the Solution Functionality (unless such change is required by Applicable Law). Nothing in this Agreement will oblige Xplor to make available to Client any new feature or function of the Solution not included within the Solution Functionality.
- 8.5 Xplor may vary:
- 8.5.1 any provision(s) of these Terms of Service by giving Client no less than two (2) months' prior written notice; and/or
- 8.5.2 any provision(s) of this Agreement from time to time by giving Client prior written notice if there is a change to Applicable Law that affects the Services or the Solution but only to the extent required to comply with such change.
- In each case, such variations may be notified by reference to materials available on Xplor's website, as set out in Clause 14.3.
- 8.6 Where any change pursuant to Clause 8.5.1 will have a material adverse effect on Client, Client shall promptly notify Xplor of such material adverse effect and Client and Xplor shall work together in good faith to mitigate the impact of the change to the Client. In the event the parties determine that it is not possible to mitigate the material adverse effect caused by the change, Client shall be entitled to terminate this Agreement with effect from expiry of the variation notice by provision of no less than one (1) month's prior written notice to Xplor. Otherwise, Client will be deemed to have accepted any variation of the provisions of this Agreement pursuant to Clause 8.5.1 two (2) months from being notified of it. Where Client terminates pursuant to this Clause 8.6, Xplor shall reimburse Client for any prepaid Fees attributable to the period after the date of termination.
9. **INTELLECTUAL PROPERTY RIGHTS**
- 9.1 Client grants, and warrants that it is (and will remain) entitled to grant, to Xplor a royalty-free, non-exclusive licence to use the Client Materials during the Term for the purpose of performing its obligations under this Agreement.
- 9.2 Client agrees to indemnify and hold harmless Xplor and its Affiliates from and against any and all Liabilities suffered or incurred by Xplor and/or its Affiliates arising out of or in connection with: (a) any failure of Client to obtain all necessary Clearances; and/or (b) any claim that the use of the Client Materials in accordance with this Agreement infringes the rights (including the Intellectual Property Rights) of any third party.
- 9.3 Subject to Clause 9.4, Xplor agrees to indemnify and hold harmless Client from and against any and all Liabilities suffered or incurred by Client arising out of or in connection with any claim that the use of the Solution, excluding any Client Materials, in accordance with this Agreement infringes the Intellectual Property Rights of any third party (**Indemnified Infringement**).
- 9.4 In no event will Xplor, its employees, agents and/or sub-contractors be liable to Client to the extent that the alleged infringement is based on:
- 9.4.1 bespoke functionality specifically required by Client;
- 9.4.2 a modification of the Solution by Client or anyone acting under its direction or on its behalf;
- 9.4.3 Client's use of the Solution in a manner contrary to the instructions given to it by Xplor (including in the Acceptable Use Policy); or
- 9.4.4 Client's use of the Solution after notice or becoming aware of the alleged or actual infringement.

- 9.5 If Xplor determines a risk of an Indemnified Infringement, Xplor may, without liability: (a) replace or modify any functionality of the Solution with substantially equivalent or replacement functionality (as applicable) so that the same is no longer infringing; (b) obtain for Client the right to continue using the Solution; or (c) terminate this Agreement and reimburse Client for any prepaid Fees attributable to the period after the date of termination (calculated, unless otherwise agreed in writing, on a pro-rata in time basis).
- 9.6 Client acknowledges and agrees that:
- 9.6.1 as between the parties, all rights (including all Intellectual Property Rights) in and to the Solution and any Proprietary Materials will at all times be and remain the property of Xplor (or its licensors), including any modifications made in response to any feedback or suggestions from Client; and
- 9.6.2 any rights in and to the Solution and the Proprietary Materials not expressly granted to Client under this Agreement are reserved to Xplor and any uses not expressly permitted are prohibited.
- 9.7 Without limiting a party's indemnification obligations, where either party wishes to be indemnified (the **Indemnified Party**) by the other party (the **Indemnifying Party**) to any extent in respect of any claim, demand, threat or proceeding brought by any third party against the Indemnified Party in respect of which the Indemnifying Party would be liable under any indemnity given under this Clause 9 (a **Third Party Claim**):
- 9.7.1 the Indemnified Party will inform the Indemnifying Party as soon as reasonably practicable of the Third Party Claim (including the particulars of it in reasonable detail);
- 9.7.2 subject to the Indemnifying Party dealing expeditiously with the Third Party Claim following notice from the Indemnified Party, the Indemnified Party will not respond, enter into any correspondence or take any legal action or other measures in respect of the Third Party Claim; and
- 9.7.3 subject to the Indemnifying Party doing so expeditiously and in a manner that does not bring the Indemnified Party into disrepute, the Indemnifying Party will be entitled, on notice, to take full conduct of a Third Party Claim and the Indemnified Party will comply with the Indemnifying Party's reasonable instructions in relation to that Third Party Claim.
- 9.8 Xplor will be entitled to make reasonable use of, and reference to, Client's name and trade or service marks in any promotional or corporate material relating to Xplor's services.
- 9.9 Each party agrees to execute such documents and/or do such things as the other may reasonably require during the Term, or at any time after termination or expiry of this Agreement, to give effect to the provisions of this Clause 9.
10. **DATA PROTECTION**
- 10.1 In respect of Client Personal Data, Client shall be the controller and Xplor shall be the processor and the relevant processing is described in Schedule 1. Xplor will:
- 10.1.1 only process such Client Personal Data as is necessary to fulfil its obligations under the Agreement, on documented instructions from Client or to comply with Applicable Law in such a case, Xplor shall inform Client of that legal requirement before processing (relevant notification is hereby provided in Clause 10.7), unless that law prohibits such information on important grounds of public interest;
- 10.1.2 not engage another processor without prior specific or general written authorisation from Client and shall inform Client of any intended changes concerning the addition or replacement of such processors, thereby giving Client the opportunity to object to such changes;
- 10.1.3 ensure that any processors appointed by it (in accordance with Clause 10.5) are bound by terms similar to those of this Clause 10.1 and appropriate audit provisions and Xplor will be responsible for any breach by such processor;
- 10.1.4 to the extent the Xplor entity is in the UK or the EEA, not transfer Client Personal Data outside the UK and/or the EEA save where there are appropriate safeguards in place to ensure that the Client Personal Data is protected or where the transfer is to a territory which has received an adequacy decision;
- 10.1.5 taking into account the nature of Xplor's processing and the information available to Xplor, provide reasonable assistance to Client: (i) in complying with Client's obligations under Chapter III of the GDPR; and (ii) pursuant to Articles 32 to 36 of the GDPR (inclusive);
- 10.1.6 to the extent reasonably practical, on the expiration or termination of this Agreement and following a request from Client, promptly delete all Client Personal Data save to the extent that Xplor is legally required to retain any Client Personal Data or where Client Personal Data is held by Xplor pursuant to Clause 10.7;
- 10.1.7 notify Client without undue delay, on becoming aware of any personal data breach relating to the Client Personal Data;
- 10.1.8 ensure that all persons expressly authorised by Xplor to process Client Personal Data are bound by confidentiality obligations;
- 10.1.9 take appropriate technical and organisational measures against the unauthorised or unlawful processing of Client Personal Data, and against the accidental loss or destruction of, or damage to Client Personal Data; and
- 10.1.10 keep appropriate records of processing activities as provided for under Data Protection Legislation
- 10.2 In the event that either party receives any complaint, notice or communication (from either a supervisory authority or a data subject) which relates directly to the processing of Client Personal Data or to the other party's compliance with Data Protection Legislation, it will notify the other party and provide the other party and the supervisory authority (if applicable) with reasonable co-operation and assistance in relation to any such complaint, notice or communication.
- 10.3 Save where Xplor is acting as a controller pursuant to Clause 10.7, Xplor will keep at its normal place of business, such records as required by Applicable Law (whether in electronic form or hard copy) relating to its processing of Client Personal Data (**Records**).
- 10.4 Xplor will permit Client's third-party representatives, on reasonable notice during normal business hours and at Client's expense and subject to appropriate confidentiality obligations, to inspect all Records for the sole purpose of

- auditing Xplor's compliance with its obligations under Clause 10.1. Such audit rights may be exercised only once in any calendar year during the term of this Agreement. . Client shall immediately inform Xplor if, in its opinion, a relevant instruction infringes Applicable Law.
- 10.5 Client hereby grants general consent to Xplor using its Affiliates and such third parties as Xplor deems appropriate as processors in respect of the Client Personal Data.
- 10.6 Client warrants and undertakes that:
- 10.6.1 it will comply with all of its obligations under Data Protection Legislation;
- 10.6.2 its disclosure to and Xplor's processing of Client Personal Data in accordance with this Agreement complies with Data Protection Legislation;
- 10.6.3 it has identified suitable lawful bases for Xplor's processing of Client Personal Data;
- 10.6.4 it has notified data subjects of Xplor's processing of Client Personal Data; and
- 10.6.5 where relevant to the Solution and/or Services provided, it has obtained the consent of data subjects in accordance with Data Protection Legislation to permit the sending of unsolicited electronic direct marketing communications.
- 10.7 Client acknowledges that Xplor may be required to process, including retain, Client Personal Data for the purposes of complying with Applicable Law. In such circumstances the Client acknowledges that Xplor will act as a controller.
- 10.8 Client acknowledges and agrees that Xplor will be entitled to aggregate and/or anonymise Client Personal Data and to use such aggregated and/or anonymised data for its business purposes during and after the Term.
- 10.9 Client acknowledges that Xplor may disclose information which may include Client Personal Data to any data protection authority, law enforcement authority or regulatory authority.
11. **LIABILITY**
- 11.1 Nothing in this Agreement will exclude or limit either party's liability in respect of: (a) death or personal injury caused by the negligence of that party; (b) fraud (including fraudulent misrepresentation); or (c) any liability which may not otherwise be lawfully excluded or limited.
- 11.2 Subject to Clause 11.1, Xplor will not be liable in contract, tort (including negligence, breach of statutory duty, liability under indemnities or otherwise) or otherwise in connection with this Agreement for: (a) any special, incidental, punitive, consequential or indirect, loss, damage, cost, and/or expense whatsoever; or (b) any lost profits, lost goodwill (or any other damage to reputation), loss of revenue, loss of business, loss of contracts, loss of anticipated savings, business interruption, loss of opportunity, loss of bargain, or lost or corrupted data, in each case regardless of whether any of these types of losses are direct, indirect or consequential. In each case, even if a party is aware of the possibility that such losses might be incurred.
- 11.3 Subject to Clause 11.1, Xplor's aggregate liability in contract, tort (including negligence, breach of statutory duty, liability under indemnities or otherwise) or otherwise under or in connection with any and all claims made relating to this Agreement will be limited to an amount equal to the Fees (excluding VAT and any third party fees) paid in the 12 month period immediately preceding the date of the first such claim.
- 11.4 Xplor will have no liability in respect of: (a) any delay or failure to perform its obligations under this Agreement to the extent the same results from Client's acts or omissions; or (b) any Liabilities suffered by Client which arises directly or indirectly from Xplor's compliance with Client's instruction, or any of the data received by Xplor being inaccurate or incomplete.
- 11.5 Except as expressly set out in this Agreement, Xplor makes no representation, warranty or guarantee as to the Services or the Solution. The Solution and the Services are provided "as is" and, subject to Clause 11.1, all warranties, conditions, terms, obligations, undertakings and representations, whether in each case express or implied by statute, common law, custom, trade usage, course of dealing or otherwise (including implied conditions of satisfactory quality and reasonable fitness for purpose) are excluded from this Agreement to the fullest extent permissible by Applicable Law.
- 11.6 Neither party will be liable for any failure, reduction in service or delay in performing its obligations under this Agreement if and to the extent that such failure, reduction in service or delay is the result of any event or circumstance that is outside the reasonable control of the affected party (a **Force Majeure Event**). Where a party's performance is or may be affected by a Force Majeure Event, it will inform the other party as soon as reasonably practicable after becoming aware of the Force Majeure Event. This Clause 11.6 does not apply to any obligation of either party to make payment to the other.
12. **TERMINATION**
- 12.1 Either party (the **Terminating Party**) will be entitled to terminate this Agreement immediately on written notice to the other party if the other party (the **Defaulting Party**):
- 12.1.1 is in material breach of this Agreement (being a single event which is, or a series of events which are together, a material breach) and either such breach is not capable of remedy or, if the breach is capable of remedy, the Defaulting Party has failed to remedy such breach within 14 business days of receiving written notice from the Terminating Party requiring it to do so; or
- 12.1.2 suffers an Insolvency Event.
- 12.2 Xplor will have the right to terminate this Agreement immediately by written notice to Client:
- 12.2.1 if Client breaches Clause 6.1 or 7.1;
- 12.2.2 if Client ceases to hold any of the Clearances; or
- 12.2.3 if Client either (a) by virtue of its activities; or (b) undergoes a Change of Control that, in Xplor's reasonable opinion, could bring Xplor into disrepute.
- 12.3 On expiry or termination of this Agreement:
- 12.3.1 all licences granted by Xplor under this Agreement will terminate and Client will immediately cease accessing and/or using the Solution;
- 12.3.2 all outstanding invoices and any uninvoiced sums attributable to the period up to termination shall become immediately due and payable; and
- 12.3.3 all provisions of this Agreement will cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue will continue in full force and effect.
- 12.4 Notwithstanding any term of this Agreement, if (a) Client terminates this Agreement other than pursuant to Clause

12.1; or (b) Xplor terminates this Agreement pursuant to Clause 12.1 or 12.2, in each case prior to the expiry of the Initial Term or Renewal Period (as the case may be) then, in addition to any outstanding Fees owed at termination, Client shall pay Xplor the Early Termination Fee

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

### 13. **CONFIDENTIALITY**

13.1 Subject to Clause 13.2, each party undertakes to the other that:

13.1.1 it will treat as confidential: (a) the contents (including the financial details) of the Order Form; and (b) all information relating in any manner to the business and/or affairs of the other party or its Affiliates which may be communicated to it under or in connection with this Agreement (**Confidential Information**);

13.1.2 it will not use, or disclose to any person, any Confidential Information except as follows:

- (a) each party may disclose Confidential Information as required by Applicable Law, a court of competent jurisdiction, any governmental, stock exchange (where applicable and in accordance with listing rules) or regulatory authority provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as reasonably possible; and/or
- (b) each party may disclose Confidential Information: (i) to its professional advisors; and/or (ii) as agreed by the other party in writing.

13.2 Clause 13.1 does not apply to any information which the recipient party can evidence is: (a) in the public domain through no fault of the recipient party; (b) obtained by the recipient party from an unrestricted third party; or (iii) has already been independently generated by the recipient party.

13.3 To the extent that Client is subject to the requirements of the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004, Xplor will provide such necessary assistance and cooperation as is reasonably requested by Client to enable Client to comply with its obligations under such legislation.

### 14. **GENERAL**

14.1 Each party represents, warrants and undertakes to the other that it has full capacity and authority to enter into and to perform this Agreement.

14.2 Any notice given under this Agreement will be in writing and served by hand, prepaid recorded or special delivery, prepaid international recorded airmail or email to the relevant party at the address stated below, or such other address as the relevant party may notify in accordance with this Clause. Any such notice will be deemed served at the time of delivery (provided that, in the case of notice by email, no automated delivery failure notice is received by the sender).

Xplor

Attention: Commercial Support with a copy to The Legal Department

Address: Registered office as set out in Order Form

Email: [commercialsupport@xplortechnologies.com](mailto:commercialsupport@xplortechnologies.com) with a copy to [legal@xplortechnologies.com](mailto:legal@xplortechnologies.com)

Client

Attention: Client

Address: Registered office set out in Order Form

Email: As set out in Order Form

14.3 In addition to formal notices given in accordance with Clause 14.2, it is agreed between the parties that Xplor may communicate with Client from time to time in relation to its use of and Xplor's provision of the Services by means of newsletters, emails, SMS or text message and messages on its website. It is agreed between the Parties that Xplor may also communicate with Client through products such as the Client Portal. Such communications may include notification of changes to the operating instructions or Network Rules, or new or replacement products or services in connection with the Solution and/or Services

14.4 Where Client provides an email address, Client agrees that Xplor may send notices to and rely on the authenticity of communications it receives from that email address as being from and binding on Client. Client must ensure only it and/or persons with authority to act on its behalf have access to its email addresses, that they are kept secure and that it contacts us immediately if it becomes aware or suspects any relevant unauthorised use or security compromise.

14.5 If any court finds that any part of this Agreement is illegal, invalid or unenforceable, that part will be considered removed, but no other part of this Agreement will be affected. If possible, the affected part will be replaced by such valid lawful and enforceable provision as most closely achieves the affected part's original legal, economic or commercial purpose.

14.6 Client may not charge, assign, novate, transfer or otherwise part with any of its rights or obligations under this Agreement without Xplor's prior written consent (not to be unreasonably withheld or delayed). Xplor may, at its discretion, charge, assign, novate, transfer or otherwise part with any of its rights or obligations under this Agreement at any time.

14.7 This Agreement contains the whole agreement between the parties and replaces all prior arrangements relating to its subject matter. The parties agree that this Agreement applies in place of any terms and conditions of Client, any terms attached to (or incorporated by reference into) any purchase order and any Incoterms.

14.8 Subject to Clause 11.1, no party will be entitled to the remedies of rescission or damages for misrepresentation arising out of, or in connection with, any agreement, warranty, statement, representation, understanding or undertaking whether or not it is set out in this Agreement. Neither party will have any claim for innocent or negligent misrepresentation based upon any statement in this Agreement.

14.9 Subject to Clause 8.5, this Agreement may only be varied by a written document signed by both parties.

14.10 No one other than a party to this Agreement, their successors and permitted assignees and Xplor's Affiliates,

will have any right to enforce any of the terms of this Agreement.

- 14.11 This Agreement will not be deemed to constitute a partnership or joint venture or contract of employment between the parties.
- 14.12 This Agreement is drafted in the English language. Any translations of this Agreement are provided/produced for convenience only. In the event of any conflict between the English language version of this Agreement and any translation, the English language version will prevail.
- 14.13 The Order Form may be executed in counterparts, each of which when executed will constitute a duplicate original, but all the counterparts will together with these Terms of Service constitute the one Agreement. Delivery of an executed counterpart by electronic mail will be as effective as delivery of a manually executed counterpart. Each party has the option to sign the Order Form by means of an electronic signature system. A party that elects to use such system warrants that the person signing the Order Form on behalf of that party has the requisite authority to bind that party by means of that system. By affixing electronic signatures, the signatories acknowledge and agree that they intend to bind the parties. Any electronic signature constitutes valid signature and will be construed as (and given equal evidentiary weight as) the signatory having signed the document as an original in manuscript.
- 14.14 On notice of any dispute, each party will appoint a senior decision-maker who will use all reasonable endeavours in good faith to settle any dispute arising in connection with this Agreement. If the matter is not resolved by such senior decision-makers within fourteen (14) days of notice of the dispute, either party may issue proceedings pursuant to Clause 14.15. Nothing in this Clause 14.14 will prevent or restrict a party from seeking injunctive relief in the courts or commencing proceedings where this is reasonably necessary to avoid any loss of a claim due to the statutes of limitations.
- 14.15 This Agreement (and any non-contractual obligations relating to it) will be governed by and construed in accordance with the laws of England and Wales and the English courts will have exclusive jurisdiction regarding any disputes arising from or in connection with this Agreement. Client waives any objection to any proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum.
- 14.16 Without affecting a party's obligation under Clause 9.7.1, each party agrees that it must notify the other of any claim it may have under this Agreement within 6 months of when the asserting party first knew or reasonably should have known of the basis of the claim. Any service of process in relation to such claim must also be made within that time period, otherwise the claim is extinguished.
- 14.17 Class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations or proceedings are not permitted. Client hereby waives any right to participate in a class action against Xplor.



**SCHEDULE 1**

DESCRIPTION OF THE PROCESSING

Subject matter, nature and purpose of the processing:	The processing of Personal Data will be as necessary under and for the purposes of Xplor providing Client the relevant services.
Types of personal data:	The types of Client Personal Data will include (on a non-exhaustive basis) <ul style="list-style-type: none"><li>• contact details such as name, phone number and email address</li><li>• information regarding type and use of memberships</li><li>• data automatically collected through use of the service (e.g. identifiers and device information; geolocation data; usage data)</li><li>• such other personal data as may be transferred by the Client</li></ul>
Types of data subjects:	Members of staff of the Client Consumers (i.e. the Client's end users)
Duration of the processing:	The duration of the processing of Client Personal Data will be the duration of this Agreement, subject to Clauses 10.1.6 and 10.7.