STANDARD TERMS & CONDITIONS

These terms and conditions will apply for the provision of our services unless varied by mutual agreement in writing by both parties, prior to the provision of the services

1.   SERVICES

We shall make the Services available to You pursuant to the terms of this Agreement and the Order Form from the Effective Date for the Term. All new Accounts (whether a user, client plan or business plan) will be charged at the cumulative monthly tariff as detailed in the Order Form on a pro-rata basis for the remainder of the Term. User Accounts are for designated Users only and cannot be shared or used by more than one User. You must inform us if a User leaves Your organisation.

We aim to provide the Services in accordance with the service levels set out in Appendix 1 of these Standard Terms and Conditions, 24 hours a day, 7 days a week. However there will be times when it is necessary to improve and/or maintain the Services, which may result in an interruption. We shall endeavour to schedule such interruptions so as to minimise the impact on the Services and will notify You in advance of when this will take place and the likely duration. Where there is a Force Majeure event the Services may not be provided 24 hours a day/ 7 days a week. If We become aware of an unscheduled interruption to the Services, We shall notify You as soon as possible and shall keep You informed as to when the Services will resume.

We may suspend access to the Services, or portion thereof, at any time, if in in Our sole reasonable discretion, the integrity or security of the Services is in danger of being compromised by acts of You, Users or Your Affiliates. We shall give You 24 hours written notice, before suspending access to the Services giving specific details of its reasons.

2.   LICENCE TO USE THE SERVICES

Subject to Your payment of the Fees, You are granted a non-exclusive and non-transferable licence to permit Users and Affiliates to use the Services (including any associated software, Intellectual Property Rights and Confidential Information of Ours) from the Effective Date during the Term for Your internal business operations. Such licence permits You to make copies of software or other information necessary for You to receive the Services via the Internet. No additional implied rights are granted beyond those specifically mentioned in this clause.

Unless permitted by Applicable Laws, nothing in this Agreement shall be construed to mean, by inference or otherwise, that You have any right to obtain source code for the software comprised within the Services. Disassembly, decompilation or reverse engineering and other source code derivation of the software comprised within the Services is prohibited.

Unless otherwise specified in this Agreement, the Services are provided and may be used solely by You, your Affiliates and Users as part of Your website/desktop architecture. You may not: (i) lease, loan, resell, assign, licence, distribute or otherwise permit access to the Services; or (ii) use the Services to provide ancillary services related to the Services; or (iii) except as permitted in this Agreement, permit access to or use of the Services by or on behalf of any third party.

3.   INTELLECTUAL PROPERTY RIGHTS

Without prejudice to Your rights in Your materials, You shall not acquire any Intellectual Property Rights in respect of the Services, documentation and other materials used by Us in connection with or related to the provision of the Services under this Agreement. No interest or ownership in the Services, the Intellectual Property Rights or otherwise is transferred to You under this Agreement. Nothing in this Agreement shall be construed to mean, by inference or otherwise, that You have any right to obtain source code for the software comprised within the Services. You are not allowed to remove any proprietary marks or copyright notices from the Services. We may take and maintain technical precautions to protect the Services from improper or unauthorised use, distribution or copying.

You shall retain sole ownership of all rights, title and interest in and to Your Data and Your pre-existing Intellectual Property Rights and shall have the sole responsibility for the legality, reliability, integrity, accuracy and quality of Your Data. You grant to Us a non-exclusive, royalty-free, world-wide licence during the term of this Agreement to use, copy, reproduce, and manipulate data provided by You or resulting from the Services for the purposes of using the data for the provision of the Services; and a non-exclusive, royalty-free, world-wide licence during the term of this Agreement to use, reproduce and display Your trade marks for the purposes of using the data for the provision of the Services and for our own marketing purposes. We shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the operation of the Services. You assign all rights, title and interest in any Feedback to Us. If for any reason such assignment is ineffective, You shall grant Us a non-exclusive, perpetual, irrevocable, royalty free, worldwide right and licence to use, reproduce, disclose, sub-licence, distribute, modify and exploit such Feedback without restriction.

4.   TERM

This Agreement commences on the Effective Date and continues for the minimum period agreed in the Order Form. The Agreement will automatically renew at the end of the agreed period unless terminated by either party giving to the other not less than 90 days notice in writing prior to the end of that agreed period. Each subsequent renewal will run for the same minimum period agreed and will be subject to the same terms and conditions.

5.   FEES, INVOICING AND PAYMENT

We shall invoice the Fees set out in the Order Form. All invoices shall be issued and paid in the currency stated in the Order Form. All Fees exclude any VAT legally payable on the date of the invoice, which shall be paid by You in addition, where applicable.

You agree to pay the Fees set out in the Order Form and accompanying invoice. The Fees are payable annually, in advance within 30 days of the date of each invoice. If You believe that any invoice is incorrect, You must notify Us in writing within 15 days of the invoice date.

The per Account Unit Rate during any renewal term will increase by 5% above the applicable per Account Unit Rate in the prior term.

Where payment of any undisputed Fee is not received on the due payment date and if after sending You a written payment reminder, no payment is made within 30 days of the reminder notice, we may, without liability to You, disable Your password, Account and access to all or part of the Services and We shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remains unpaid.

Interest will be charged on any late payments of Fees on a daily basis at the rate of 5% per annum above the base rate from time-to-time of Barclays Bank plc from the due date until payment. We reserve the right to recover any costs and reasonable legal fees We incur in recovering overdue payments.

6.   SECURITY

You shall be responsible for Your User's compliance with this Agreement and will ensure that the Services are used only for lawful purposes and in accordance with the terms of this Agreement. You will be responsible for maintaining the confidentiality of User passwords and will use reasonable efforts to prevent unauthorised access to or use of the Services. You will notify us as soon as possible of any such unauthorised access or use. You will not make the Services available to anyone other than Users; or disrupt the integrity or performance of the Services or any third party data contained therein. If You request an interruption to the Service you must give Us at least 24 hours' notice in writing to support@objectivemanager.com. If You become aware of any unscheduled interruption in the Services You will notify us at support@objectivemanager.com as soon as possible. You are required to maintain Your equipment used in connection with the use of the Services in good working condition and provide all assistance, facilities and information to Us as we reasonably require to carry out Our obligations under this Agreement.

7. WARRANTIES

Each party warrants and represents that: (i) it has full corporate power and authority to enter into this Agreement and to perform the obligations required hereunder; (ii) the execution and performance of its obligations under this Agreement does not violate or conflict with the terms of any other agreement to which it is a party and is in accordance with Applicable Laws; and (iii) it shall respect all Applicable Laws.

You represent, warrant and undertake that any software, data, equipment, client logos or other materials provided by You to Us or employed by You in Your use of or receipt of the Services shall not: (i) infringe any Intellectual Property Rights, privacy or personal data interests of any third party (ii) be obscene or defamatory of any person; and (iii) include any price sensitive or market sensitive information.

You represent, warrant and undertake that You rightfully own the necessary user rights, copyrights and ancillary copyrights and permits required for You to fulfil Your obligations under this Agreement.

You represent, warrant and undertake that You, Users and Affiliates shall maintain reasonable security measures (as may change over time) covering, without limitation, confidentiality, authenticity and integrity to ensure that the access to the Services granted under this Agreement is limited as set out under this Agreement. In particular You, Users and Affiliates shall treat any identification, password or username or other security device for use of the Services with due diligence and care and take all necessary steps to ensure that they are kept confidential, secure and are used properly and are not disclosed to unauthorised persons. Any breach of the above shall be immediately notified to Us in writing.

You represent, warrant and undertake that You shall ensure that Your network and systems comply with the relevant specification provided by Us from time to time and that You are solely responsible for procuring and maintaining Your network connections and telecommunications links from Your systems to Our data centres and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Your network connections or telecommunications links or caused by the Internet.

In the event of any breach of any of the above representations or warranties, in addition to any other remedies available at law or in equity to Us, We will have the right to suspend immediately any related Services if deemed reasonably necessary by Us to protect our interests or Our other customers. If practicable and depending on the nature of the breach, We may (in Our absolute discretion) give You an opportunity to cure such breach. In such case once the breach is cured, We will promptly restore the Service(s).

We represent, warrant and undertake to You that: (i) the Services shall be performed with reasonable care and skill in accordance with the terms of this Agreement; (ii) we have all necessary right, title and interest to licence the Services to You for use in accordance with the terms of this Agreement; and (iii)

use of the Services shall not infringe the Intellectual Property Rights of any third party. The foregoing warranties shall not: (a) cover deficiencies or damages relating to any third party components not furnished by Us; or (b) any third party provided connectivity necessary for the provision or use of the Services. In the event of a breach of these warranties, the Company shall have no liability or obligations to the Customer other than to reimburse the Fees for the Services.

Except as expressly provided in this Agreement, the Services are provided on an "as is" basis, and Your use of the Services is at your own risk. We do not warrant that the Services will be uninterrupted, error-free, or completely secure. We do not and cannot control the flow of data to or from Our network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or omissions of such third parties can impair or disrupt connections to the Internet (or portions thereof). Although We will use commercially reasonable efforts to take all actions We deem appropriate to remedy and avoid such events, We cannot guarantee that such events will not occur. Accordingly, We disclaim any and all liability resulting from or related to such events.

Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality and fitness for purpose), are hereby excluded to the fullest extent permitted by Applicable Laws.

8.   CONFIDENTIAL INFORMATION

Each party may use the Confidential Information of a disclosing party only for the purposes of this Agreement. Each party must keep confidential all Confidential Information disclosed to it, except where the recipient of Confidential Information is required to disclose the Confidential Information by law to any regulatory, governmental or other authority with relevant powers to which either party is subject.

Either party may disclose the Confidential Information of the other party to those of its employees and agents who have a need to know the Confidential Information for the purposes of this Agreement but only if the employee or agent is bound by confidentiality undertakings equivalent to those set out in this Agreement.

Both parties agree to destroy or return all documents and other materials containing Confidential Information immediately upon completion of the Services or termination or expiry of this Agreement.
The obligations of confidentiality under this Agreement do not extend to information that: (i) was rightfully in the possession of the receiving party before the negotiations leading to this Agreement; (ii) is, or after the Effective Date, becomes public knowledge (otherwise than as a result of a breach of this Agreement); or (iii) is lawfully disclosed to the receiving party by a third party without restriction on

disclosure; or (iv) is independently developed by the receiving party, which independent development can be shown by written evidence; or (v) is required by Applicable Laws to be disclosed.

If either party is required to disclose any Confidential Information pursuant to clause 9. (v) such party shall, where lawfully permitted to do so: (i) promptly consult with and take into account any comments from the other party prior to making any disclosure; and (ii) work with the other party to ensure that any exemptions or other legitimate means of preventing disclosure or limiting disclosure are used to the fullest extent possible.

9.   DATA PROTECTION

Each party undertakes to comply with its obligations under Data Protection Laws. To the extent that personal data is processed when You, Affiliates or Users use the Services, the parties acknowledge that We are a data processor and You are a data controller and the parties shall comply with their respective statutory data protection obligations. You shall ensure that: (i) the personal data, which You supply or disclose to Us, has been obtained fairly and lawfully; (ii) You will obtain all necessary approvals from persons whose data is being processed; and (iii) You have in place all necessary registrations with authorities to permit Us to transfer personal data to third parties pursuant to Our obligations under this Agreement.

We confirm that We: (i) shall only process personal data on behalf of, and in Your name; (ii) shall only process data in accordance with Your instructions; and (iii) have taken, as well as Our subcontractors, licensors and hosts, sufficient and appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to personal data, having regard to the state of technological development and cost of implementing any measures, to ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the personal data to be protected.

In addition to the above obligations, the parties shall comply with their respective obligations set out in the DPA. In the event of any conflict between the terms of the Standard Terms and Conditions in this clause 10 and the terms of the DPA, the terms of the DPA shall prevail. Any personal data that You or Users provide to Us during registration or when ordering or using the Services (such as the Your email address) shall be collected and processed by Us in accordance with the Privacy Policy.

10.   LIMITATION OF LIABILITY

Neither party excludes or limits its liability for fraud, death or personal injury caused by any negligent act or omission or wilful misconduct in connection with the provision or use of the Services. Neither party

shall be liable for any Consequential Loss arising out of or related to this Agreement or in tort (including negligence or breach of statutory duty), misrepresentation or however arising, even if the party was advised of the possibility of such damages.

Except as expressly prohibited by Applicable Laws and subject to the above, Our total liability to You whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or based upon any claim for indemnity or contribution shall in no circumstances exceed in aggregate a sum equal to the higher of £100,000 or the amount paid by You under this Agreement in the 12 months period prior to the date on which any such claim arose.

You agree that, in entering into this Agreement, either You did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if You did rely on any representations, whether written or oral, not expressly set out in this Agreement) that You shall have no remedy in respect of such representations and (in either case). You shall be liable for any breaches of this Agreement caused by the acts, omissions or negligence of any Users or Your Affiliates who access the Services as if such acts, omissions or negligence had been committed by You.

You accept that We are not liable for any virus or other contaminants which enter Your email system or computer network via email and are not be liable for any interruptions to the Services or Outages arising directly or indirectly from interruptions to the flow of data to or from the internet changes, updates or repairs to the network or the Software subject to Us striving to minimise the interruptions/outages that may be caused by such change; the effects of the failure or interruption of services provided by third parties; any acts of Force Majeure; any actions or omissions of You (including, without limitation, breach of Your obligations set out in this Agreement); problems with Your equipment and/or third party equipment; or interruptions to the Services requested by You.

You agree that you are in a better position to foresee and evaluate any loss You may suffer in connection with this Agreement and that the Fee has been calculated on the basis of the limitations and exclusions in this Agreement and that You will effect insurance as is suitable having regard to Your particular circumstances and the terms of this Agreement.

11.   INDEMNITY

We shall, at our own expense: (i) defend, or at Our option, settle any claim or suit brought against You by a third party on the basis of infringement of any Intellectual Property Rights by the Services (excluding any claim deriving from any Customer Data); and (ii) pay any final judgement entered against You on such issue or any settlement thereof, provided that: (a) You notify Us promptly of each such claim; (b)

We are given sole control of the defence and/or settlement; and (c) You fully co-operates and provide all reasonable assistance to Us in the defence or settlement.

If all or any part of the Services becomes, or in Our opinion may become, the subject of a claim, We at Our own expense and sole discretion may: (i) procure for You the right to continue to use the Services or the affected part thereof; or (ii) replace the Services or affected part with other suitable non-infringing service(s); or (iii) modify the Services or affected part to make the same non-infringing.

We shall have no obligations under the clauses above to the extent that a claim is based on: (i) the combination, operation or use of the Services with other services or software not provided by Us, if such infringement would have been avoided in the absence of such combination, operation or use; or (ii) use of the Services in any manner inconsistent with the terms of this Agreement; or (iii) the negligence or wilful misconduct of You, Your Affiliates or Users.

You shall defend, indemnify and hold Us, Our Affiliates and employees, suppliers or agents harmless from and against any cost, losses, liabilities and expenses, including reasonable legal costs arising from any claim relating to or resulting directly or indirectly from: (i) any claimed infringement or breach of any Intellectual Property Rights with respect to use of the Services outside the scope of this Agreement; (ii) any access to or use of the Services by any User or Your Affiliates; and (iii) use by Us of Your Data; (iv) Your breaches of Data Protection Laws or your obligations under the DPA; or (v) any breach of this Agreement by a User or Your Affiliates.

12.   TERMINATION

A party may terminate this Agreement if any "acts of default" occur. An act of default would be; if You fail to pay moneys due under this Agreement within 30 days of the due date; if either party commits a material breach of any term of the Agreement (other than failure to pay moneys due described above) and this breach (if capable of being remedied) is not remedied within 30 days of a written request by the other party to remedy the same; if either party is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding up, or dissolution (otherwise than for the purposes of a solvent amalgamation / reconstruction) or has an administrative or other receiver, manager, trustee, liquidator or administrator or similar officer appointed over all or any substantial part of its assets or enters into or proposes any composition or arrangement with its creditors generally. If you commit an act of default We may suspend the provision of the Services. This suspension will not be deemed to be a breach of any term of this Agreement. If either party commits an act of default the other party may terminate this Agreement by notice in writing.

We have the right to terminate this Agreement if You undergo a change of control; sell all of Your assets or merge or reorganise where You are not the surviving entity; or if You dispute the ownership or validity

of Our Intellectual Property Rights. If You terminate this Agreement for an act of Our default, then We shall refund You any Fees paid in advance for the Services after the effective date of termination. If We terminate this Agreement for an act of Your default You shall pay Us all unpaid Fees due up to the effective date of termination plus the Fees that would have been payable from the effective date of termination until the date on which this Agreement could have expired or been terminated by You on giving 90 days notice.

Any termination of this Agreement for any reason shall be without prejudice to any other rights or remedies a party may have under this Agreement or at law and shall not affect any accrued rights or liabilities of either party or the coming into force or continuing in force of any provision which is (expressly or implied) intended to come into/continue in force on or after termination.

In the event of termination: (i) You will promptly pay all outstanding Fees to Us; (ii) Your right to use the Services and all licences granted under this Agreement will end; (iii) each party will return immediately to the other all property and materials containing Confidential Information belonging to the other; and (iv) at Your option, following receipt of a written request from You, We shall delete (in accordance with the terms of the DPA) or return all Your Data in csv format, free of charge, provided that such request is made within 30 days of termination If You require Your Data to be returned in a different format We reserve the right to charge for this. Any termination of this Agreement shall not affect any accrued rights or liabilities of either party and shall not affect the coming into force or the continuance in force of any provision of this Agreement that is expressly or by implication intended to come into force or continue in force on or after termination.

13.   FORCE MAJEURE

Neither party shall be liable for any breach of its obligations in this Agreement, except in respect of payment, resulting from Force Majeure. Any time limit or estimate for a party to perform any act hereunder shall be suspended during an Event of Force Majeure. If the default shall continue for more than 30 days then the party not in default shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure but such termination shall not affect any pre-existing rights or obligations of either party. Each party will give notice (containing details of the circumstances) to the other upon becoming aware of an event of Force Majeure. If a default as a result of Force Majeure continues for more than 30 days the other party may terminate the Agreement and neither party shall have any liability to the other in respect of that termination (but this will not affect any pre-existing rights or obligations of either party).

14. WAIVER

The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

15. NOTICES

Any notice request instruction or other document to be given under this Agreement shall be delivered or sent by first class post to the address of the other party set out in the Agreement (or such other address as may have been notified) and any such notice or other document shall be deemed to have been served if delivered at the time of delivery and if sent by post upon the expiration of 48 hours after posting. Notwithstanding the aforesaid, We may change or modify the terms of this Agreement in order to comply with a change in applicable law upon giving You 30 days notice via email. All changes shall be deemed to have been accepted by You unless the Customer terminates the Agreement prior to the expiry of the 30 day period

16. RELATIONSHIP BETWEEN THE PARTIES

We are independent contractors and nothing in this Agreement will be construed as creating an employer-employee relationship.

17. INVALID PROVISIONS

If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision that achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

18. ENTIRE AGREEMENT

This Agreement, including the Order Form and any other documents referred to herein constitutes the entire Agreement between the parties relating to the subject matter and supersedes all prior agreements, representations, negotiations and discussions between the parties relating to the subject matter thereof.

No change, alteration or modification to this Agreement shall be valid unless in writing and signed on behalf of both parties hereto.

19. SUCCESSORS

This Agreement shall be binding upon and endure for the benefit of the successors in title of the parties to the Agreement.

20. ASSIGNMENT

No party may assign or transfer its rights under this Agreement without the prior written consent of the other party, such consent shall not be unreasonably withheld, however We shall be entitled to assign the Agreement to: (i) any company in Our group of companies; or (ii) any entity that purchases Our shares or assets as the result of a merger, takeover or similar event.

21. APPLICABLE LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

22. NO THIRD PARTY RIGHTS

No term of this Agreement is intended to confer a benefit on or to be enforceable by, any person who is not a party to this Agreement under the Contracts (Rights of Third Parties) Act 1999, or any similar legislation in any applicable jurisdiction.

DEFINITIONS

In this Agreement, the following words shall have the following meanings:

"**Account**" means any individual user, business plan or client plan set up on the system.

"**Account Unit Rate**" means the amount payable per Account.

"**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control of a party. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of a party.

"**Agreement**" means the Standard Terms and Conditions, DPA and Privacy Policy together.

"**Annual Subscription Fee**" means the amount payable to Us based upon the number of Accounts purchased (users, client plans and business plans) multiplied by the Account Unit Rate in each 12 months of the Term.

"**Applicable Laws**" means all applicable laws, statutes and regulations from time to time in force relevant to the provision and use of the Services.

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"**Confidential Information**" means any and all information in whatsoever form relating to the You or Us or our Affiliates, or the business, prospective business, finances, technical processes, computer software (both source code and object code), Intellectual Property Rights or finances of You, Us or Affiliates (as the case may be), or compilations of two or more items of such information, whether or not each individual item is in itself confidential, which comes into a party's possession by virtue of its entry into this Agreement or provision or use of the Services, and which the party regards, or could reasonably be expected to regard, as confidential and any and all information which has been or may be derived or obtained from any such information.

"**Consequential Loss**" means pure economic loss, special loss, losses incurred by any third party, losses arising from business interruption, loss of business revenue, goodwill or anticipated savings, losses whether or not occurring in the normal course of business, costs of procuring substitute goods or product(s) or wasted management or staff time.

"**Data Protection Laws**" means all laws in any relevant jurisdiction that relate to data protection, privacy, the use of personal data relating to individuals, and/or the information rights of individual including, without limitation, the laws and regulations of the European Union, the European Economic Area, their member states and the United Kingdom, applicable to the processing of Personal Data, including where applicable the Data Protection Act 2018, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 and any applicable national implementing laws, regulations and secondary legislation 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)and the equivalent in any other relevant jurisdictions all as amended or replaced from time to time.

"**DPA**" means the data processing agreement attached to these Terms and Conditions as Schedule 1, as amended from time to time.

"**Effective Date**" means the date the first people are added to the system or an Order Form is signed.

"**Feedback**" means feedback, innovations or suggestions created by Users or You or Affiliates regarding the attributes, performance or features of the Services.

"**Fees**" means the amounts payable for the Services comprising of the Annual Subscription and Implementation Fee.

"Force Majeure" means anything outside the reasonable control of a party, including but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, power shortage, including without limitation where We cease to be entitled to access the Internet for whatever reason, server crashes, deletion, corruption, loss or removal of data, transportation embargo, failure or delay in transportation, any act or omission (including laws, regulations, disapprovals or failures to approve) of any government or government agency.

"Implementation Fee" means 50% of the Annual Subscription Fee for any new accounts added.

"Intellectual Property Rights" means all copyrights, patents, utility models, trade marks, service marks, registered designs, moral rights, design rights (whether registered or unregistered), technical information, know-how, database rights, semiconductor topography rights, business names and logos, computer data, generic rights, proprietary information rights and all other similar proprietary rights (and all applications and rights to apply for registration or protection of any of the foregoing) as may exist anywhere in the world.

"**Order Form**" means the document You complete to place an order for the Services, including any schedules attached thereto and entered into between You and Us or any of our Affiliates from time to time.

"Privacy Policy" means the privacy policy published at www.objectivemanager.com as amended from time to time

"**Services**" means the software and services provided which includes the implementation, hosting and ongoing management of the software and services ordered by You and made available by Us during the Term.

"Standard Terms and Conditions" means these terms and conditions.

"Term" means the terms set out in the Order Form.

"**Users**" means the individuals authorised by You to use the Services and all individuals for whom Accounts have been ordered and set up and have been supplied with user identifications, login credentials or passwords by You (or by Us at Your request).

"**We**," "**Us**," or "**Our**" means Fulbright Limited of Harrow House, 23 West Street, Haslemere, GU272AB.

"**You**," or "**Your**" means the company or other legal entity named in the Order Form for which you are accepting this Agreement, and Affiliates of that company or entity.

"**Your Data**" means all data or information submitted by You to us or imported into the Services for the purpose of using the Services or facilitating Your use of the Services.

APPENDIX 1

SERVICE LEVELS

Service Hours

The target service level is that the Services will be available to You 24 hours a day (excluding interruptions to Services in relation to maintenance, Force Majeure events or suspensions due to Your breach of this Agreement.). We shall make the Services available to You for 99.9% of the time (Service Hours).

If there is a service interruption then the following procedure shall be followed: Affected Users shall use the self-help and FAQs on the Objective Manager website located at www.objectivemanager.com/help to try and remedy the relevant problem. If this does not work then the User should contact our helpdesk by e-mail at: support@objectivemanager.com for further assistance.

Help Desk

Our helpdesk will use all reasonable endeavours to respond to Services interruption issues within one hour of the notification to us by You. Our help desk hours are 09:00 to 22.30 hours on business days. If the notification was made outside of this time our help desk will respond within one hour of the start of the next period.

Service Credits

Service credits will accrue if the Services are not available (as calculated below) to You during Service Hours. For the purposes of this Agreement, available means that the Services can be accessed and used by the User(s) and that the Services are fully operational.

In the event that the Services are not available during the Service Hours You will be entitled to service credits calculated in accordance with the provisions of this Appendix 1 and shall be Your sole and exclusive remedy for the our failure to meet the service levels

The maximum service credit that shall be credited per User per month shall be the amount of the Fee payable in relation to the reported downtime for that User for that calendar month. The permissible service credit per User shall be calculated pro rata to the monthly Fee for the user reduced by the proportionate amount of total Service Hours that were unavailable compared to the total Service Hours that should have been available. (For example: User charge is £10 for a month. Month has 4 weeks of 5 days of 9 hours per day gives total Service Hours of 180 hours. If there is unavailability of 18 hours then the Service Credit would be 18/180 (i.e. 10%) of £10 = £1.)

Service credits shall be credited against future Fees payable by You. If You are not up to date with any payment obligations then, without prejudice to Our rights under the Agreement in relation to late payment or otherwise, any service credits will be applied to reduce the amount owed by You to Us until any payment obligations are no longer overdue. To receive service credits, You must submit a written request to support@objectivemanager.com, within 30 days after the end of the relevant calendar month in which the relevant service interruption occurred.

SCHEDULE 1

DATA PROCESSING AGREEMENT

This DPA is entered into between the Controller and the Processor and is incorporated into and governed by the terms of the Agreement.

1.   Definitions

Any capitalised term not defined in this DPA shall have the meaning given to it in the Agreement.

"Agreement"	means the agreement between the Controller and the Processor for the provision of the Services;
"Controller"	means You;
"Data Subject"	shall have the same meaning as in Data Protection Laws;
"DPA"	means this data processing agreement together with Exhibit A and Exhibit B;
"Personal Data"	shall have the same meaning as in Data Protection Laws;
"Processor"	means Us;
"Security Policy"	means the Processor's security documents as updated from time to time, and made reasonably available by the Processor;
"Standard Contractual Clauses"	means the EU model clauses for personal data transfer from controllers to processors c2010-593 - Decision 2010/87EU, set out in Exhibit B of this DPA;
"Sub-Processor"	means any person or entity engaged by the Processor or its Affiliate to process Personal Data in the provision of the Services to the Controller.

2.   Purpose

2.1   The Processor has agreed to provide the Services to the Controller in accordance with the terms of the Agreement. In providing the Services, the Processor shall process Your Data on behalf of the Controller. Your Data may include Personal Data. The Processor will process and protect such Personal Data in accordance with the terms of this DPA.

2.2   The Controller and Processor shall take steps to ensure that any natural person acting under the authority of the Controller or the Processor who has access to Personal Data does not

process them except on the instructions from the Controller unless he or she is required to do so by any Data Protection Laws.

3. Scope

3.1 In providing the Services to the Controller pursuant to the terms of the Agreement, the Processor shall process Personal Data only to the extent necessary to provide the Services in accordance with both the terms of the Agreement and the Controller's instructions documented in the Agreement and this DPA.

4. Processor Obligations

4.1 The Processor may collect, process or use Personal Data only within the scope of this DPA.

4.2 The Processor confirms that it shall process Personal Data on behalf of the Controller and shall take steps to ensure that any natural person acting under the authority of the Processor who has access to Personal Data shall only process the Personal Data on the documented instructions of the Controller.

4.3 The Processor shall promptly inform the Controller, if in the Processor's opinion, any of the instructions regarding the processing of Personal Data provided by the Controller, breach any Data Protection Laws.

4.4 The Processor shall ensure that all employees, agents, officers and contractors involved in the handling of Personal Data: (i) are aware of the confidential nature of the Personal Data and are contractually bound to keep the Personal Data confidential; (ii) have received appropriate training on their responsibilities as a data processor; and (iii) are bound by the terms of this DPA.

4.5 The Processor shall implement appropriate technical and organisational procedures to protect Personal Data, 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.

4.6 The Processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate: (i) the pseudonymisation and encryption of Personal Data; (ii) the ability to ensure the on-going confidentiality, integrity, availability and resilience of processing systems and services; (iii) the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; (iv) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the

processing. In accessing the appropriate level of security, account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed.

4.7 The technical and organisational measures detailed in the Security Policy shall be at all times adhered to as a minimum security standard. The Controller accepts and agrees that the technical and organisational measures are subject to development and review and that the Processor may use alternative suitable measures to those detailed therein. The Controller acknowledges and agrees that, in the course of providing the Services to the Controller, it may be necessary for the Processor to access the Personal Data to respond to any technical problems or Controller queries and to ensure the proper working of the Services. All such access by the Processor will be limited to those purposes.

4.8 Where Personal Data relating to an EU or UK Data Subject is transferred outside of the EEA it shall be processed in accordance with the provisions of the Standard Contractual Clauses, unless the processing takes place: (i) in a third country or territory recognised by the EU Commission to have an adequate level of protection; or (ii) by an organisation located in a country which has other legally recognised appropriate safeguards in place, such as the EU-US Privacy Shield or Binding Corporate Rules.

4.9 Taking into account the nature of the processing and the information available to the Processor, the Processor shall assist the Controller by having in place appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Controller's obligation to respond to requests for exercising the Data Subject's rights and the Controller's compliance with the Controller's data protection obligations in respect of the processing of Personal Data.

5. Controller Obligations

5.1 The Controller represents and warrants that it shall comply with the terms of the Agreement, this DPA and its obligations under Data Protection Laws.

5.2 The Controller represents and warrants that it has obtained any and all necessary permissions and authorisations necessary to permit the Processor, its Affiliates and Sub-Processors, to execute their rights or perform their obligations under this DPA.

5.3 The Controller is responsible for compliance with Data Protection Laws, including requirements with regards to the transfer of Personal Data under this DPA and the Agreement.

5.4 All Affiliates of the Controller who use the Services shall comply with the obligations of the Controller set out in this DPA.

5.5 The Controller shall implement appropriate technical and organisational procedures to protect Personal Data, 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. The Controller shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate: (i) the pseudonymisation and encryption of Personal Data; (ii) the ability to ensure the on-going confidentiality, integrity, availability and resilience of processing systems and services; (iii) the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; (iv) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing. In accessing the appropriate level of security account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed.

5.6 The Controller may require correction, deletion, blocking and/or making available the Personal Data during or after termination of the Agreement. The Processor will process the request to the extent it is lawful, and will reasonably fulfil such request in accordance with its standard operational procedures to the extent possible.

5.7 The Controller acknowledges and agrees that some instructions from the Controller, including destruction or return of data, the Processor assisting with audits, inspections or DPIAs or providing any assistance under this DPA, may result in additional fees. In such case, the Processor will notify the Controller of its fees for providing such assistance in advance, unless otherwise agreed.

6. Sub-Processors

6.1 The Controller acknowledges and agrees that: (i) Affiliates of the Processor may be used as Sub-processors; and (ii) the Processor and its Affiliates respectively may engage Sub-processors in connection with the provision of the Services.

6.2 All Sub-processors who process Personal Data in the provision of the Services to the Controller shall comply with the obligations of the Processor set out in this DPA. The Processor shall prior to the relevant Sub-processor carrying out any processing activities in respect of the Personal Data; (i) appoint each Sub-processor under a written contract containing materially the same

obligations to those of the Processor in this DPA enforceable by the Processor; and (ii) ensure each such Sub-processor complies with all such obligations.

6.3   The Controller agrees that the Sub-processors may transfer Personal Data for the purpose of providing the Services to the Controller in accordance with the Agreement to countries outside the EEA. The Processor confirms that such Sub-processors: (i) are located in a third country or territory recognised by the EU Commission to have an adequate level of protection; or (ii) have entered into Standard Contractual Clauses with the Processor; or (iii) have other legally recognised appropriate safeguards in place, such as the EU-US Privacy Shield or Binding Corporate Rules.

6.4   The Controller authorises the Processor to use the Sub-processors already engaged by the Processor as at the date of the Agreement and the Processor shall make available to the Controller the current list of Sub-processors which shall include the identities of Sub-processors and their country of location. During the term of this DPA, the Processor shall provide the Controller with prior notification, via email, of any changes to the list of Sub-processor(s) who may process Personal Data before authorising any new or replacement Sub-processor(s) to process Personal Data in connection with the provision of the Services.

6.5   The Controller may object to the use of a new or replacement Sub-processor, by notifying the Processor promptly in writing within ten (10) Business Days after receipt of the Processor's notice.

7.   Liability

7.1   The limitations on liability set out in the Agreement apply to all claims made pursuant to any breach of the terms of this DPA.

7.2   The parties agree that the Processor shall be liable for any breaches of this DPA caused by the acts and omissions or negligence of its Sub-processors to the same extent the Processor would be liable if performing the services of each Sub-processor directly under the terms of the DPA, subject to any limitations on liability set out in the terms of the Agreement.

7.3   The parties agree that the Controller shall be liable for any breaches of this DPA caused by the acts and omissions or negligence of its Affiliates as if such acts, omissions or negligence had been committed by the Controller itself.

7.4   The Controller shall not be entitled to recover more than once in respect of the same claim.

8. Audit

8.1   The Processor shall make available to the Controller all information reasonably necessary to demonstrate compliance with its processing obligations and allow for and contribute to audits and inspections.

8.2   Any audit conducted under this DPA shall consist of examination of the most recent reports, certificates and/or extracts prepared by an independent auditor bound by confidentiality provisions similar to those set out in the Agreement. In the event that provision of the same is not deemed sufficient in the reasonable opinion of the Controller, the Controller may conduct a more extensive audit which will be: (i) at the Controller's expense; (ii) limited in scope to matters specific to the Controller and agreed in advance; (iii) carried out during UK business hours and upon reasonable notice which shall be not less than 4 weeks unless an identifiable material issue has arisen; and (iv) conducted in a way which does not interfere with the Processor's day-to-day business.

8.3   This clause shall not modify or limit the rights of audit of the Controller, instead it is intended to clarify the procedures in respect of any audit undertaken pursuant thereto.

9. Data Breach

9.1   The Processor shall notify the Controller without undue delay after becoming aware of (and in any event within 72 hours of discovering) any accidental or unlawful destruction, loss, alteration or unauthorised disclosure or access to any Personal Data ("**Data Breach**").

9.2   The Processor will take all commercially reasonable measures to secure the Personal Data, to limit the effects of any Data Breach, and to assist the Controller in meeting the Controller's obligations under Data Protection Laws.

10. Compliance, Cooperation and Response

10.1   In the event that the Processor receives a request from a Data Subject in relation to Personal Data, the Processor will refer the Data Subject to the Controller unless otherwise prohibited by law. The Controller shall reimburse the Processor for all costs incurred resulting from providing reasonable assistance in dealing with a Data Subject request. In the event that the Processor is legally required to respond to the Data Subject, the Controller will fully cooperate with the Processor as applicable.

10.2   The Processor will notify the Controller promptly of any request or complaint regarding the processing of Personal Data, which adversely impacts the Controller, unless such notification is not permitted under applicable law or a relevant court order.

10.3   The Processor may make copies of and/or retain Personal Data in compliance with any legal or regulatory requirement including, but not limited to, retention requirements.

10.4   The Processor shall reasonably assist the Controller in meeting the Controller's obligation to carry out data protection impact assessments (DPIAs), taking into account the nature of processing and the information available to the Processor.

10.5   The parties acknowledge that it is the duty of the Controller to notify the Processor within a reasonable time, of any changes to applicable data protection laws, codes or regulations which may affect the contractual duties of the Processor. The Processor shall respond within a reasonable timeframe in respect of any changes that need to be made to the terms of this DPA or to the technical and organisational measures to maintain compliance. If the parties agree that amendments are required, but the Processor is unable to accommodate the necessary changes, the Controller may terminate the part or parts of the Services which give rise to the non-compliance. To the extent that other parts of the Services provided are not affected by such changes, the provision of those Services shall remain unaffected.

10.6   The Controller and the Processor and, where applicable, their representatives, shall cooperate, on request, with a supervisory data protection authority in the performance of their respective obligations under this DPA and Data Protection Laws.

11.   Term and Termination

11.1   The Processor will only process Personal Data for the term of the DPA. The term of this DPA shall coincide with the commencement of the Agreement and this DPA shall terminate automatically together with termination or expiry of the Agreement.

11.2   The Processor shall at the choice of the Controller, upon receipt of a written request received within 30 days the end of the provision of the Services relating to processing, delete or return Personal Data to the Controller. The Processor shall in any event delete all copies of Personal Data in its systems within 90 days of the effective date of termination of the Agreement unless: (i) applicable law or regulations require storage of the Personal Data after termination; or (ii) Your partial personal data is stored in backups, then such personal data shall be deleted from backups up 30 days after the effective date of termination of the Agreement.

12. General

12.1 This DPA sets out the entire understanding of the parties with regards to the subject matter herein.

12.2 Should a provision of this DPA be invalid or become invalid then the legal effect of the other provisions shall be unaffected. A valid provision is deemed to have been agreed which comes closest to what the parties intended commercially and shall replace the invalid provision. The same shall apply to any omissions.

12.3 Subject to any provisions of the Standard Contractual Clauses to the contrary, this DPA shall be governed by the laws of England and Wales. The courts of England shall have exclusive jurisdiction for the settlement of all disputes arising under this DPA.

The parties agree that this DPA is incorporated into and governed by the terms of the Agreement.

EXHIBIT A

OVERVIEW OF DATA PROCESSING ACTIVITIES TO BE PERFORMED BY THE PROCESSOR

1. Controller

The Controller transfers Personal Data identified in sections 3, 4 and 5 below, as it relates to the processing operations identified in section 6 below.

The Controller is You.

2. Processor

The Processor received data identified in sections 3, 4 and 5 below, as it relates to the processing operations identified in section 6 below.

The Processor is Us.

3. Data Subjects

The Personal Data transferred includes but is not limited to the following categories of Data Subjects:

- Employees, partners and Consultants of the Controller and other users added by the Controller from time to time.
- Users, Affiliates and other participants from time to time to whom the Controller has granted the right to access the Services in accordance with the terms of the Agreement.
- Other individuals to the extent identifiable in the content of emails or their attachments or in archiving content.

4. Categories of Data

The Personal Data transferred includes but is not limited to the following categories of data:

- Personal details, names, role, department, line manager, office location, career goals and objectives, performance management information of Users.
- User names, passwords, email addresses of Users.
- Personal Data derived from the Users use of the Services such as records and business intelligence information.
- Personal Data within email and messaging content which identifies or may reasonably be used to identify, data subjects.
- Meta data including sent, to, from, date, time, subject, which may include Personal Data.
- Data concerning education and profession.

- File attachments that may contain Personal Data.

- Information offered by Users as part of support enquiries.

- Survey, feedback and assessment messages.

- Other data added by the Controller from time to time.

5.   Special categories of Data

No sensitive data or special categories of data are permitted to be transferred and shall not be contained in the content of or attachments to, emails.

6.   Processing operations

The Personal Data transferred will be subject to the following basic processing activities:

- Personal Data will be processed to the extent necessary to provide the Services in accordance with both the Agreement and the Controller's instructions. The Processor processes Personal Data only on behalf of the Controller.

- Processing operations include but are not limited to: effectively managing performance objectives for Your employees and clients, and to assist in the development of Your business plans. This operation relates to all aspects of Personal Data processed.

- Technical support, issue diagnosis and error correction to ensure the efficient and proper running of the systems and to identify, analyse and resolve technical issues both generally in the provision of the Services and specifically in answer to a Controller query. This operation may relate to all aspects of Personal Data processed but will be limited to metadata where possible.

- Virus, anti-spam and Malware checking in accordance with the Services provided. This operation relates to all aspects of Personal Data processed.

- URL scanning for the purposes of the provision of targeted threat protection and similar service which may be provided under the Agreement. This operation relates to attachments and links in emails and will relates to any Personal Data within those attachments or links which could include all categories of Personal Data.

EXHIBIT B

COMMISSION DECISION C(2010)593

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

the Controller, (the data "**exporter"**)

and

the Processor, (the data "**importer"**)

each a "**party**"; together "**the parties**",

HAVE AGREED on the following Standard Contractual Clauses (the "**Standard Contractual 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 Exhibit A of the DPA.

Clause 1

Definitions

For the purposes of the Standard Contractual Clauses all terms used in capitals shall have the meaning given to them in the DPA unless defined otherwise below:

(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***1***;

(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 Standard Contractual 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 subprocessor*' means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor 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 Standard Contractual 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 Exhibit A of the DPA which forms an integral part of the Standard Contractual Clauses.

Clause 3

Third-party beneficiary clause

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 subprocessor 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 subprocessor shall be limited to its own processing operations under the Standard Contractual 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 Standard Contractual Clauses;

(c)   that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in the Security Policy;

(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 subprocessor 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 Standard Contractual Clauses, with the exception of the Security Policy, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Standard Contractual Clauses, unless the Standard Contractual Clauses or the contract contain commercial information, in which case it may remove such commercial information;

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

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

Clause 5

Obligations of the data importer2

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 Standard Contractual 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 Standard Contractual 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 the Security Policy 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 Standard Contractual 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 Standard Contractual Clauses, or any existing contract for subprocessing, unless the Standard Contractual Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of the Security Policy 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 subprocessing, it has previously informed the data exporter and obtained its prior written consent;

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

(j)   to send promptly a copy of any subprocessor agreement it concludes under the Standard Contractual Clauses to the data exporter.

Clause 6

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 subprocessor 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 subprocessor 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 of 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 subprocessor 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 subprocessor 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 subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Standard Contractual 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 subprocessor shall be limited to its own processing operations under the Standard Contractual 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 Standard Contractual 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.

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 subprocessor, 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 subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, 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 Standard Contractual Clauses shall be governed by the law of the Member State in which the data exporter is established.

Clause 10

Variation of the contract

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

Clause 11

Subprocessing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Standard Contractual Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Standard Contractual Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Standard Contractual Clauses. Where the subprocessor 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 subprocessor's obligations under such agreement.

2. The prior written contract between the data importer and the subprocessor 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 subprocessor shall be limited to its own processing operations under the Standard Contractual Clauses.

3. The provisions relating to data protection aspects for subprocessing 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.

4. The data exporter shall keep a list of subprocessing agreements concluded under the Standard Contractual 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 subprocessor 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 subprocessor 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.

Clause 13

Miscellaneous

1. These Standard Contractual Clauses take priority over any other agreement between the parties, whether entered into before or after the date these Standard Contractual Clauses are entered into.

2. Unless the Standard Contractual Clauses are expressly referred to and expressly amended, the parties do not intend that any other agreement entered into by the parties, before or after the date the Standard Contractual Clauses are entered into, will amend the terms or the effects of the Standard Contractual Clauses, or limit any liability under the Standard Contractual Clauses, and no term of any such other agreement should be read or interpreted as having that effect.