

# Datrix Master Terms

## 1. Definitions and Interpretations

<b>“Agreement”</b>	these Master Terms, together with a signed Service Schedule, its annexures and any other attachments to these Master Terms;
<b>“Anniversary Date”</b>	the date on which the Initial Term expires and the anniversary date of subsequent renewals;
<b>“Applicable Laws”</b>	the laws of England and Wales and any other laws or regulations, regulatory policies or industry codes which apply to the provision of the Services.
<b>“Business Day”</b>	Monday to Friday 09:00 – 17:30 BST/GMT (excluding UK Bank Holidays);
<b>“Commencement Date”</b>	the date on which each Agreement comes into force pursuant to clause 10 below;
<b>“Company”</b>	the person, firm or company purchasing Services from Datrix as identified in the Service Schedule;
<b>“Company Equipment”</b>	the technical equipment belonging to or to be provided by the Company for use by Datrix in the provision of the Services;
<b>“Confidential Information”</b>	in relation to either Party, all confidential information disclosed to a Party or its employees, officers, representatives or advisors by the other Party pursuant to or in connection with the relevant Agreement (whether orally or in writing or any other medium, and whether labelled as confidential or not);
<b>“Datrix”</b>	Datrix Limited, whose Registered Office is at Gray’s Inn House, 127 Clerkenwell Road, London EC1R 5BD.
<b>“Datrix Partner”</b>	means the technology companies with whom Datrix has a contractual relationship as a reseller;
<b>“Documents”</b>	includes, but is not limited to, inventions, improvements, formulae, designs, programs, drawings, manuals, source codes, plans and any design documents prepared by Datrix as provided in the Service Schedule;
<b>“Fees”</b>	the price to be paid by the Company to Datrix as set out in the Service Schedule, as amended by the Parties in writing from time to time;
<b>“Initial Term”</b>	the initial Term for each Agreement and as specified in the applicable Service Schedule;
<b>“Intellectual Property Rights”</b>	patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in Confidential Information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all existing and future rights capable of present assignment, applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
<b>“Licensed Materials”</b>	the documentation, the Software, SaaS, the monitoring tools and any materials, either tangible or intangible, that Datrix licenses to the Company and/or generates in the course of providing the Services and/or Professional Services.
<b>“Losses”</b>	any losses, actions, costs, liabilities, expenses (including reasonable legal expenses), demands, claims and damages;
<b>“Party”</b>	a party to an Agreement and Parties shall be construed accordingly.
<b>“Premises”</b>	the Company’s Premises as specified in the Service Schedule or such other Premises as may be agreed in writing from time to time between the Parties;
<b>“Professional Services”</b>	professional service work provided by Datrix to the Company for a specific piece of work or project, which may or may not be related to the Services;
<b>“Request for Change (RFC)”</b>	a written instruction agreed between the Parties to alter the original scope of the project including, but not limited to changed deliverables, time, materials or cost, made in accordance with Clause 17 and the applicable Service Schedule.
<b>“Required Consents”</b>	any consents, licensed and approvals (if any) required from third parties in connection with the delivery of Services by Datrix.
<b>“Services”</b>	the services to be provided by Datrix to the Company as described in the applicable Service Schedule;
<b>“Service Level Agreement (SLA)”</b>	the agreed response times as described in the Services Schedule that define the level of service that should be expected by the Company in the delivery of Services by Datrix;

<b>“Service Request”</b>	a request for services by the Company made in accordance with Clause 3.1 of these Master Terms;
<b>“Service Schedule”</b>	the document detailing the Service/s to be provided to the Company which is signed by the Company and which is governed by these Master Terms;
<b>“Service Terms”</b>	the service specific terms which relate to an individual Service Schedule;
<b>“Software”</b>	the software for which Datrix is to provide Services as identified on the applicable Service Schedule;
<b>“Term”</b>	the term of for each Agreement as specified in the applicable signed Service Schedule;
<b>“Third Party Provider”</b>	any individual, firm or company who is not part of either the Company or Datrix organisation and who may provide services, software or hardware to the Company pursuant to a contract. An example of a Third Party Provider may be a software vendor; and
<b>“Third Party Product”</b>	a product produced or marketed by a Third Party Provider;

- 1.1. Unless the context otherwise requires, each reference in each relevant Agreement to to:
  - 1.1.1. “writing”, and any cognate expression, includes a reference to any communication effected by electronic, facsimile transmission or similar means;
  - 1.1.2. a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
  - 1.1.3. a Schedule is a schedule to the applicable Agreement; and
  - 1.1.4. a clause or paragraph is a reference to a clause of the applicable Agreement (other than the Schedules) or a paragraph of the relevant Schedule.
- 1.2. Headings used in each Agreement are for convenience only and shall have no effect upon the interpretation of the applicable Agreement.
- 1.3. Words imparting the singular number shall include the plural and vice versa.
- 1.4. References to any gender shall include the other gender.

## **2. Agreement Structure**

- 2.1. Signature of a Service Schedule by the Parties creates a separate legally binding Agreement for the purchase and supply of Third Party Products and Services as described in the applicable Service Schedule, independent of all other agreements that might exist between Datrix and Company. Each Service Schedule will be subject to these Master Terms and the applicable Service Terms.
- 2.2. Unless expressly referenced to amend or remove a provision of these Master Terms, in the event of any conflict between the various terms comprising the Agreement, they shall take precedence in the following descending order of precedence:
  - 2.2.5. These Master Terms;
  - 2.2.6. The Service Schedule;
  - 2.2.7. The Service Terms.
- 2.3. Any terms and conditions set out in any purchase order or other document supplied by the Company that are in addition to or at variance with these Master Terms and/or the applicable Service Terms shall be void and of no effect unless Datrix expressly agrees otherwise in writing.

## **3. Services Schedule**

- A Service Schedule shall be agreed in accordance with this clause:
- 3.1. The Company shall provide Datrix with a request for Services either verbally or in writing, setting out, inter alia, the Company’s requirements and specifications, including:
    - 3.1.1. a description of what work is to be done and its scope;

- 3.1.2. date(s) by which any work has been requested to start and finish (if applicable);
  - 3.1.3. address and contact details for the Company;
  - 3.1.4. commercials relating to the Services;
  - 3.1.5. deliverables (if any); and
  - 3.1.6. such other information as Datrix may reasonably request to prepare a draft Service Schedule.
- 3.2. Following receipt of a Service Request Datrix shall, as soon as reasonably possible, provide the Company with a draft Service Schedule.
  - 3.3. Datrix and the Company shall discuss and agree the Service Schedule and when it has been agreed, they shall both sign a copy of it and it shall become a legally binding Agreement, subject to these Master Terms and the applicable Service Terms.
  - 3.4. A Service Schedule shall not be legally binding or have any effect unless both Parties have signed it.
  - 3.5. No amendment shall be made to these Master Terms, to a Service Schedule or to the applicable Service Terms except as agreed in writing between the Parties.

#### **4. Company's Obligations**

- 4.1. The Company shall:
  - 4.1.1. allow Datrix and their employees access to the Premises during Business Days, for the purposes of providing the Services. Any access requested outside Business Days will be agreed in advance with the Company by providing Datrix with reasonable notice;
  - 4.1.2. provide Datrix with such information in a timely manner as may be required by Datrix in connection with the performance of the Services, and shall ensure such information is provided prior to the commencement of the Services (if requested) and is accurate at the time it is provided;
  - 4.1.3. provide Datrix with all necessary literature, books, policies and other material which the Company requires Datrix, its employees, agents and Contractors (such as security policies and Health and Safety handbooks) to observe;
  - 4.1.4. be responsible (at its own cost) for preparing the Premises for the supply of the Services;
- 4.2. If Datrix's performance of its obligations under the Services Schedule is prevented or delayed by any act or omission of the Company or the Company's agents, sub-Contractors or employees, the Company shall be liable to pay to Datrix on reasonable demand all demonstrable costs, charges or losses sustained or incurred by Datrix as a direct result of such acts or omissions. This clause 4.2 shall survive termination of the relevant Agreement.
- 4.3. Datrix may charge the Company for any additional reasonable costs and expenses properly incurred by Datrix caused directly as a result of any RFC or any failure on the part of the Company to provide instructions in a reasonable and timely manner.
- 4.4. The Company will allow Datrix, its agents, Contractors and employees such use of the Company's Equipment as is reasonably required for the purpose of providing the Services. Authorisation procedures in relation to use of hardware or access to the Company's systems will be agreed between the Company and Datrix in writing. Datrix shall use the Company's Equipment:
  - 4.4.1. only for the purposes of providing the Services; and
  - 4.4.2. in accordance with good computing practice.

#### **5. Datrix Obligations**

- 5.1. Datrix shall provide the Third Party Products and Services, subject to these Master Terms, the applicable Service Schedule and Service Terms and, where relevant, in accordance with the SLA.
- 5.2. While Datrix shall make reasonable endeavours to maintain the timescales quoted, meeting such timescales shall not constitute the essence of the relevant Agreement. Timescales, SLA's and lead times set out in each Services Schedule are given in good faith, but because of the nature of the work undertaken, they must be considered to be estimates only.
- 5.3. All work performed, and Third Party Products and Services delivered, by Datrix will be carried out in compliance with all Applicable Laws and in a professional manner in accordance with commercially recognised industry standards.

- 5.4. Datrix shall have, and shall maintain, all Required Consents relating to its performance of the Services as may be required from time to time.
- 5.5. Datrix shall provide reasonable co-operation with any third-party service providers retained by the Company, including suppliers of key software vendor applications, to the extent reasonably necessary for the purpose of providing the Services or facilitating the provision of Services.
- 5.6. In the event that Datrix is unable to deliver Third Party Products and Services on the scheduled date due to the Company's failure to meet its obligations hereunder, the delivery date for the Third Party Products and/or Services shall be extended by the amount of such delay and the Fees may be increased to take into account such Company delay. Datrix shall not be liable to the Company for any such Company caused delay.

**6. Payment**

- 6.1. Unless otherwise agreed in the applicable Services Schedule, Datrix shall invoice the Company for the Fees as follows:
  - 6.1.1. Hardware - 100% on delivery of the hardware;
  - 6.1.2. Software - 100% on Provision of License;
  - 6.1.3. Project Services – in accordance with the payment milestones in the Service Schedule;
  - 6.1.4. SaaS – quarterly in advance;
  - 6.1.5. Website Hosting - quarterly in advance;
  - 6.1.6. Managed IT Services - monthly in advance;
  - 6.1.7. Support and Maintenance - monthly in advance;
  - 6.1.8. Ad-hoc services - monthly in arrears
- 6.2. Datrix will email invoices to the Company to the billing email address set out in the Services Schedule. Unless otherwise specified in the Services Schedule, the Company shall pay each of Datrix's valid invoices within thirty (30) days of the date on the invoice. All sums due under each Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding.
- 6.3. The Fees exclude value added tax and all other duties and/or taxes which shall be charged by Datrix and paid by the Company and shall be identified on the invoice as a separate item.
- 6.4. The Company shall pay debt collection fees and interest charges on any undisputed sum that is overdue in accordance with the Late Payment of Commercial Debts (Interest) Act (1998) (as amended). Company shall notify Datrix in writing within ten (10) days of receipt of an invoice that the invoice is in dispute.
- 6.5. If payment of the Fee or any part thereof is overdue, then unless Company has notified Datrix in writing that such payment is in dispute within ten (10) days of the receipt of the corresponding invoice Datrix shall notify Company in writing of such delay and in the event that such fees are not paid in full within ten (10) days of the date of such notice, Datrix may at its option:
  - 6.5.9. suspend provision of the Third Party Products and Services until the corresponding overdue fees are paid in full; or
  - 6.5.10. treat such as a material breach and terminate any relevant Agreement associated to this material breach.
- 6.6. During the Term of each Agreement at each Anniversary Date thereof, Datrix may increase the Fees as follows:
  - 6.6.11. Services Fee – annually notified to Company in writing at least sixty (60) days prior to the next anniversary of the Effective Date after the giving of such notice, provided that any such increase shall not exceed RPI + 5%.
  - 6.6.12. Third Party Products – will be quoted for on a case by case basis and Datrix will notify the Company of the price validity of such quotations.
  - 6.6.13. As a result of increases made by a Datrix Partner in respect of the cost of power as a result of market or supplier increases provided that any such increases will be limited to the actual cost of increases incurred by Datrix.
  - 6.6.14. If Datrix becomes aware that the Company's use of the Software or SaaS is, or will soon be, in excess of the agreed licence limit, Datrix shall notify Company of such and shall invoice Company for the relevant increase in the Fee corresponding to the necessary increase to Company's license limit.

- 6.7. The Fees for each Agreement shall be based in pounds sterling. In the event the Company wishes Datrix to invoice in a currency which is not pounds sterling, if agreed by Datrix, the Fees shall be converted into the new currency ("New Currency") at the then current Exchange Rate. If the Exchange Rate changes +/- 5% over the term of the Agreement, Datrix shall be entitled to apply the then current Exchange Rate against the New Currency and to revise the Fees.
- 6.8. If Datrix, during the investigation and diagnosis of any technical issue related to the delivery and provision of Services, determines in its reasonable opinion that the Issue is caused by the Company or otherwise not attributable to Datrix, then Datrix will provide a quotation to the Company for the additional work required and will only continue to work on the Issue if such quotation is accepted by the Company. The Company may use any pre-paid BlockHours, as agreed in a Service Schedule, to cover such support.

**7. Limitation of Liability**

- 7.1. Nothing in these Master Terms and each Agreement shall exclude or limit either party's liability for (i) fraud or other criminal act, (ii) personal injury or death caused by the negligence of that party's employees in connection with the performance of their duties hereunder or by defects in the Datrix supplied pursuant to the relevant Agreement, or (iii) any other liability that cannot be excluded by law.
- 7.2. Subject to Clause 7.1, in no event will Datrix be liable for any damages resulting from: loss of, damage to or corruption of data (which shall be treated in accordance with Clause 7.6), loss of use, lost profits, loss of revenue, loss of anticipated savings, loss of goodwill, loss of reputation and any indirect or consequential loss. Such liability is excluded whether such damages were reasonably foreseeable or actually foreseen.
- 7.3. Except as provided in Clause 7.1 and in Clause 7.2, Datrix's maximum aggregate liability to Company for any cause whatsoever shall not exceed the limits set out in the following categories:
  - 7.3.15. For liability for loss or damage to tangible property shall be One Hundred Thousand Pounds (£100,000) for the Term of the applicable Agreement;
  - 7.3.16. For all other liability arising during the Term of the applicable Agreement, Datrix's total aggregate liability shall not exceed 125% of the related Fees paid and payable by Company in the twelve (12) months preceding the act or omission giving rise to the liability in respect of the Agreement that is the subject of the Company's claim.
- 7.4. Save as provided in Clause 7.5, Company shall have no remedy in respect of any representation (whether written or oral) made to it upon which it relied upon when entering into the relevant Agreement ("Misrepresentation") and Datrix shall have no liability to Company other than pursuant to the express terms of the applicable Agreement including the relevant Service Schedule.
- 7.5. Nothing in each Agreement shall exclude or limit Datrix's liability for any Misrepresentation made by Datrix fraudulently.
- 7.6. Datrix shall use its reasonable endeavours to carry out regular backups of any hosted materials in accordance with good industry practice. In the event of loss of, damage to or corruption of data arising from any act or omission of Datrix's under the applicable Agreement, Datrix shall be liable for the cost of restoring such data from the latest backups available, but not for the value of any lost or corrupted data that could not be so recovered.
- 7.7. Unless otherwise expressly stated herein, Datrix shall have no liability arising out of or in connection with the availability, performance, non-performance, defective performance, maintenance or otherwise of any third-party telecommunication lines, networks, systems and/or associated or supporting systems used by Company to use or otherwise access the Services.
- 7.8. The Company acknowledges and agrees that it has accepted the terms of each Agreement in the knowledge that Datrix's liability is limited and that the prices and charges payable have been calculated so as to reflect such limitations and thus represent a reasonable and commercial allocation of risk between the parties.
- 7.9. No action, regardless of form, arising out of transactions occurring under or contemplated under the relevant Agreement may be brought by either party more than two (2) years after the cause of action has accrued.
- 7.10. Datrix shall have no liability to the Company in respect of any such delay or failure in the provision of the Services in the event the Company or any Third Party Provider omit or do anything which prevents or delays Datrix from undertaking or complying with any of its obligations under the relevant Agreement.

**8. Insurance**

8.1. Datrix warrants that it has taken out and will maintain all appropriate types and amounts of insurance to cover its obligations and liabilities under each relevant Agreement, including those that will survive expiration or early termination. Datrix will evidence such insurance to the Company upon request.

**9. Term and Termination**

9.1. Each Agreement shall commence on the date it is signed and shall continue until completion of the Services in accordance with the terms and conditions of the applicable Service Schedule, subject to earlier termination in accordance with this clause 9

9.2. Notwithstanding any other provision in these Master Terms or the applicable Agreement, any consultancy work or professional services included as part of a Service Schedule will terminate once the work, project, or engagement has been confirmed as complete by the Company.

9.3. Either Party may terminate an Agreement by giving to the other not less than ninety (90) calendar days' written notice after expiry of the Initial Term.

9.4. Without prejudice to Datrix's other rights or remedies, Datrix may immediately terminate an Agreement by serving written notice if any charges, such as Fees, owing under the applicable Agreement are not paid within thirty (30) calendar days of the due date for payment.

9.5. Either Party may immediately terminate an Agreement by giving written notice to the other Party if:

- 9.5.1. any charges, such as Fees, owing under the relevant Agreement are not paid within thirty (30) calendar days of the due date for payment and in accordance with clause 10.6;
- 9.5.2. either Party commits a material breach of any of the provisions of an applicable Agreement and, if the breach is capable of remedy, fails to remedy it within twenty-eight (28) calendar days after receiving written notice specifying the particulars of the breach requiring it to be remedied;
- 9.5.3. a receiver is appointed over any of the property or assets of that other Party;
- 9.5.4. either Party becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
- 9.5.5. either Party goes into liquidation (except for the purposes of amalgamation or re-construction and in such a manner that the Company resulting there from effectively agrees to be bound by or assume the obligations imposed on that other Party under the applicable Agreement);
- 9.5.6. anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other Party;
- 9.5.7. either Party ceases, or threatens to cease, to carry on business.

9.6. For the purposes of clause 9.5.2, a breach shall be considered capable of remedy if the defaulting Party can comply with the provision in question in all respects other than as to the timescales for performance.

9.7. The rights under this clause 9 shall not prejudice any other right or remedy of either Party.

**10. Dispute Resolution**

10.1. If a dispute arises under an Agreement, including any dispute arising out of any amount due to a Party, then before bringing any suit, action or proceeding in connection with such dispute, a Party must first give written notice of the dispute to the other Party describing the dispute and requesting that it is resolved under this dispute resolution process ("Dispute Notice") set out in Clause 10.2 and 10.3 below.

10.2. If the Parties are unable to resolve the dispute within thirty (30) days of delivery of the Dispute Notice, then each party will promptly (but no later than five (5) Business Days thereafter):

- 10.2.1. appoint a designated representative who has sufficient authority to settle the Dispute and who is at a higher management level than the person with direct responsibility for the administration of the affected Agreement ("Designated Representative"); and
- 10.2.2. notify the other Party in writing of the name and contact information of such Designated Representative; and
- 10.2.3. agree actions and response times, including calls and/or attendance at meetings as necessary.

- 10.3. If the parties are unable to resolve the dispute within thirty (30) days after the appointment of both Designated Representatives, then either Party may refer the matter for mediation by the Centre for Dispute Resolution (CEDR) or a similar body for mediation, whose decision shall be binding on the Parties. . Unless agreed otherwise the mediator's costs and expenses shall be shared equally between the parties.
- 10.4. Notwithstanding the foregoing, either party may seek interim or other equitable relief necessary (including an injunction) to prevent irreparable harm.

**11. Effects of Termination**

- 11.1. Upon the termination of an Agreement for any reason:
  - 11.1.1. any sum owing under this Master Terms or any Service Schedule including such sums as are due from termination date until expiry of the agreement shall be immediately payable;
  - 11.1.2. On termination of an Agreement the Company shall immediately pay to Datrix all of Datrix’s outstanding unpaid invoices and interest in respect of Services supplied but for which no invoice is submitted, Datrix shall submit an invoice, which shall be payable immediately on receipt.
  - 11.1.3. clauses 6, 7, 11, 13, 14, 15, 16, 20, 21, 22, 28, 29 and 30 shall remain in effect;
  - 11.1.4. any rights or obligations to which any of the Parties to the applicable Agreement may be entitled or be subject before its termination shall remain in full force and effect;
  - 11.1.5. each Party shall (except to the extent referred to in clause 11.1.3) forthwith cease to use, either directly or indirectly, any Confidential Information, and shall forthwith return to the other Party upon reasonable request any documents in its possession or control which contain or record any Confidential Information (where this is reasonably practicable); and
  - 11.1.6. if terminated by either Party under clause 9.3, Datrix will be entitled to invoice the Company for payment of costs properly incurred up to the termination date (which may include costs relating to hardware, software, technical services, telecommunications Agreements and the balance of any fees which Datrix have paid on behalf of the Company to Third Party Providers, which were spread over an agreed period of time and documented as part of the monthly service charge) but only to the extent that they are non-cancellable or cannot be reduced in any way by Datrix.

**12. Exit Management Services**

- 12.1. Upon expiry of the Initial Period (or any subsequent term agreed by the parties) Datrix shall use reasonable endeavours to provide reasonable assistance to the Company to aid transition to a successor service provider (“Exit Management Services”). Datrix shall charge Company its standard rates for the provision of the Exit Management Services.
- 12.2. Datrix's performance of Exit Management Services is subject to (i) Company's prior payment of all amounts then due and owing to Datrix as of the date of termination or expiration of the applicable Agreement, and (ii) Company's return to Datrix (at Company's expense) any Datrix property in Company's possession or control (except items purchased by Company from Datrix).

**13. Data**

- 13.1. For the purposes of this clause 13:
  - 13.1.1. "Data Protection Requirements" means the Data Protection Act 2018 and any other legislation in force from time to time which implements or replaces the Data Protection Directive (95/46/EC) (including Regulation (EU) 2016/679 - the General Data Protection Regulation ("Regulation")); and
  - 13.1.2. “Data Controller”, “Data Subject”, “Personal Data” and “Processing” shall bear the respective meanings given to them in the Data Protection Act 2018 or the Regulation when it comes into effect (and Process and Processes shall be construed accordingly).
- 13.2. To the extent that the Company collects and passes Personal Data to Datrix pursuant to an Agreement, it warrants and undertakes that (i) it will comply with its obligations under the Data Protection Requirements; (ii) it has obtained appropriate consent from all Data Subjects to whom it relates or is otherwise legally entitled, to pass their Personal Data to Datrix for the purposes for which Datrix is permitted by the Company to use it; and (iii) the Personal Data is accurate and, where necessary, up to date. The parties hereby agree that, to the extent Datrix processes Personal Data on behalf of the Company, the Company shall at all times remain the Data Controller. A

description of the data processing activities, including the personal data concerned (if applicable), shall be set out in the applicable Service Schedule.

- 13.3. Datrix shall comply with its obligations under the Data Protection Requirements and:
- 13.3.1. act only on lawful written instructions from the Company as Data Controller;
  - 13.3.2. take all measures required pursuant to Article 32 of the Regulation;
  - 13.3.3. not transfer any Personal Data outside the countries of the European Economic Area, without and only to the extent of any express written consent of the Company, such consent not to be unreasonably withheld or delayed or subject to unreasonable conditions. For the avoidance of doubt, to the extent that the Company withholds consent under this clause 13.3.3 but such a transfer outside the European Economic Area is required by applicable legislation, Datrix shall not be liable for any breach of its obligations which arise as a result of the Company withholding its consent in accordance with this clause. Datrix shall notify the Company of the legal requirement to transfer the Personal Data outside the European Economic Area, unless the applicable legislation prohibits such information on important grounds of public interest. Where the Company objects to Datrix processing Personal Data outside the European Economic Area, the parties shall discuss the data protection concerns in good faith with an aim of resolving the concerns. If no such resolution is possible, the Company shall be entitled to terminate the affected Agreement without prejudice to any fees or obligations incurred by the Company prior to termination;
  - 13.3.4. make available to the Company as Data Controller all information necessary to demonstrate compliance with the obligations laid down in Article 28 of the Regulation and allow for and contribute to audits, including inspections, conducted by the Company as Data Controller or another auditor mandated by the Company as Data Controller, subject to the payment by the Company to Datrix of any reasonable expenses incurred by Datrix. With regard to this clause 13.3.4, Datrix shall immediately inform the Company as Data Controller if, in its opinion, an instruction infringes the Regulation or other Union or Member State (as defined in the Regulation) data protection provisions;
  - 13.3.5. taking into account the nature of the Processing, assist the Company as Data Controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Data Controller's obligation to respond to requests for exercising the Data Subject's rights laid down in Chapter III of the Regulation subject to the payment by the Company to Datrix of any reasonable expenses incurred by Datrix; and
  - 13.3.6. reasonably assist the Company as Data Controller in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the Regulation taking into account the nature of processing and the information available to Datrix as Data Processor subject to the payment by the Company to Datrix of any reasonable expenses incurred by Datrix.
- 13.4. For the avoidance of doubt in the course of Datrix, its Affiliates and its Sub-contractors performing the Services to the Company, the Company may transfer data to Datrix and the Company consents to Datrix, any Datrix affiliate and any Datrix sub-contractor processing that data on behalf of the Company in accordance with Datrix's obligations under the applicable Agreement, provided that such personnel have committed to maintain the confidentiality of the Personal Data.
- 13.5. Notwithstanding any other provision in the relevant Agreement, Datrix shall not subcontract the Processing of Personal Data without the prior written consent of the Company. In the event that the Company consents to the appointment of a subprocessor (including under clause 13.4), Datrix shall ensure that, prior to any processing of personal data by the subprocessor, Datrix enters into an agreement with the subprocessor on terms that provide no less protection for Personal Data than those set out in this clause and will procure where necessary a right to audit each subprocessor to the extent required under Data Protection Requirements. Where the Company objects to Datrix processing Personal Data through use of a particular Sub-processor or Sub-processors, the parties shall discuss the data protection concerns in good faith with an aim of resolving the concerns. If no such resolution is possible, the Company shall be entitled to terminate the affected Agreement without prejudice to any fees or obligations incurred by the Company prior to termination
- 13.6. Upon conclusion of the Personal Data Processing services contemplated by the relevant Agreement, Datrix will (as directed by the Company) return to the Company or destroy the Personal Data and existing copies held by or on behalf of Datrix, in non-proprietary format, unless Union or Member State (as defined in the Regulation) law requires storage of the Personal Data, subject to the payment by the Company to Datrix of any reasonable expenses incurred by Datrix.
- 13.7. The Company warrants that provided that Datrix, its authorised servants, agents and sub-contractors comply with their obligations under each applicable Agreement, the Company has the right to authorise Datrix, its servants, agents or sub-contractors to Process such Personal Data when performing the Services and the Company shall

indemnify Datrix, and keep the same indemnified against all losses, claims, demands or actions which relate to or arise out of any breach of this warranty by the Company to the extent that such breach causes a breach of Data Protection Requirements.

- 13.8. Any change to or requirement for a change to the data processing activities requested by the Company, must be agreed between the parties in advance of any change being implemented and shall be subject to the Change Control Procedure.

**14. Intellectual Property**

- 14.1. Datrix is the owner or licensee of any and all patents, copyright, trade secrets, trademarks and any other intellectual property rights that subsist in the Services, the Licensed Materials and the Datrix Software. Title and all intellectual property rights to any design, new software, new protocol, new interface, enhancement, update, derivative works, revised screen text or any other items that Datrix creates for the Company pursuant to the applicable Agreement shall remain vested in Datrix or its licensors. Any rights not expressly granted herein are reserved to Datrix.

- 14.2. For the duration of the applicable Agreement, Datrix grants the Company a personal, non-transferable, royalty-free licence to:

- 14.2.7. Use the Software and/or SaaS upto the licence limit; and
  - 14.2.8. To use the Licensed Materials;
- for its own internal business purposes.

- 14.3. For the duration of the applicable Agreement, the Company grants Datrix a personal, non-transferable, royalty-free licence to:

- 14.3.9. use any Company owned or licenced software or hardware;
  - 14.3.10. use any Company owned materials, data and any other Company background intellectual property;
- for the purpose of providing Services to the Company.

**15. IPR Protection**

- 15.1. Subject to the provisions of this Clause 15, Datrix shall defend at its own expense any claim brought against Company alleging that the normal use or possession of the Datrix Software and/or Datrix owned Licensed Materials infringes a patent, copyright, or mask work belonging to a third party in the United States of America or European Union ("Intellectual Property Claim") and Datrix shall pay all damages awarded or agreed to be paid to any third party in settlement of an Intellectual Property Claim provided that Company:

- 15.1.1. promptly furnishes Datrix with written notice of the Intellectual Property Claim upon becoming aware of the same;
- 15.1.1. makes no admissions or settlements without Datrix's prior written consent;
- 15.1.2. acts in accordance with Datrix's reasonable instructions and provides Datrix with reasonable assistance in respect of the Intellectual Property Claim; and
- 15.1.3. gives to Datrix the sole authority to defend or settle the Intellectual Property Claim.

- 15.2. Datrix does not provide intellectual property protection in respect of Third Party Products and Third Party services or Datrix Partner products or services. Datrix hereby assigns to Company (to the extent legally assignable) any rights which Datrix may have under any intellectual property protection given by any third party in respect of Third Party Products and Services (copies of which will be supplied upon request), and Datrix shall provide reasonable assistance to Company for the purpose of enforcing Company's rights under such Third Party Provider intellectual property protection.

- 15.3. Datrix shall have no liability for any Intellectual Property Claim resulting from the combination of the Licensed Materials and/or Datrix Software with other products that were neither supplied nor combined with the Licensed Materials and/or Datrix Software by Datrix, or if the same results from any breach of Company's obligations under the relevant Agreement.

- 15.4. This clause states Datrix's entire obligation and liability and Company's sole remedy in respect of any infringement or alleged infringement of any intellectual property rights arising from its acquisition, possession or use of the Services, the Licensed Materials and Datrix Software. Datrix hereby excludes all other obligations and liabilities in

relation to infringement or alleged infringement of the intellectual property rights of any person to the fullest extent permitted by law.

- 15.5. Datrix reserves the right to use any and all skills, expertise, knowledge and know-how gained and/or arising from each Agreement in the provision of similar software or services to other Datrix customers and/or potential customers and the Company shall place no restriction whatsoever on such right.
- 15.6. Subject to the provisions of this Clause 15, the Company shall defend at its own expense any claim brought against Datrix alleging that the normal use or possession of the Company Data, Company Software, Key Vendor Applications and Hosted Materials infringes a patent, copyright, or mask work belonging to a third party in the United States of America or European Union ("Intellectual Property Claim") and Company shall pay all damages awarded or agreed to be paid to any third party in settlement of an Intellectual Property Claim provided that Datrix:
  - 15.6.1. promptly furnishes the Company with written notice of the Intellectual Property Claim upon becoming aware of the same;
  - 15.6.2. makes no admissions or settlements without the Company's prior written consent;
  - 15.6.3. acts in accordance with the Company's reasonable instructions and provides the Company with reasonable assistance in respect of the Intellectual Property Claim; and
  - 15.6.4. gives to the Company the sole authority to defend or settle the Intellectual Property Claim.
- 15.7. The Company shall reimburse Datrix's reasonable costs incurred in complying with the provisions of Clause 16.6.

**16. Confidentiality**

- 16.1. "Confidential Information" shall be defined as any information (whether disclosed in oral, written or electronic form) belonging or relating to a party's business affairs or activities and which: (i) has been marked as confidential or proprietary, (ii) has been identified orally or in writing as being of a confidential nature, or (iii) may reasonably be supposed to be confidential in the circumstances.
- 16.2. Each party undertakes that for a period of five (5) years from the date of disclosure it will not, without the prior written consent of the other party, use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than is necessary for the performance of its rights and obligations under the relevant Agreement. In any event, each party hereby agrees that it shall treat the other's Confidential Information with the same degree of care as it employs with regard to its own Confidential Information of a like nature and in any event in accordance with best current commercial security practices, disclosing such Confidential Information only to those of its employees, consultants and bona fide professional advisers who need to have such information for the purposes of the relevant Agreement, and ensuring that such employees, consultants and professional advisers shall be bound by the same confidentiality obligations as are set out in this Clause 16. Each party agrees that it shall be liable for any breach of this Clause 30 by any employee, consultant or professional advisor to whom it has disclosed the other party's Confidential Information as though it had committed the breach itself.
- 16.3. The provisions of Clause 16.2 shall not apply to:
  - 16.3.1. any information in the public domain otherwise than by breach of the relevant Agreement;
  - 16.3.2. information lawfully in the possession of the receiving party thereof before disclosure by the disclosing party, as evidenced by written documents;
  - 16.3.3. information lawfully obtained without restriction from a third party, as evidenced by written documents; and
  - 16.3.4. information required to be disclosed by a court of competent jurisdiction, governmental body or applicable regulatory authority provided that the party under such duty to disclose shall use all reasonable endeavours to give the other party as much prior notice of such disclosure as is reasonably practicable and permitted by law.
- 16.4. Datrix may publicise its involvement with Company with Company's prior written consent, such consent not to be unreasonably withheld or delayed.

**17. Request For Change**

- 17.1. If either party identifies a requirement for a change to the Services, the identifying party will send to the other party detailing the change requirements using the agreed RFC form ("RFC Form") as a template or if agreed by

alternative means (i.e. email). If sent by Datrix, the RFC Form will state the effect such a change will have on the Services and the Fees. If sent by the Company, the receipt of the RFC Form by Datrix will represent a request to Datrix to state in writing the effect the change will have on the Services and the Fees. Datrix will use reasonable endeavours to supply the necessary details within 15 working days from receipt of an RFC Form from the Company. To accept such RFC, the party that received it must sign as appropriate in the RFC Form.

17.2. Datrix shall use reasonable endeavours to accommodate reasonable changes that may be requested by the Company, provided such changes are compatible with the scope of the Services already provided by Datrix.

**18. Anti-Bribery**

18.1. Each party agrees to comply with the UK Bribery Act 2010 and each party undertakes, warrants and represents that it shall maintain policies, procedures and guidelines that are intended and designed to prevent them doing or failing to do any act or thing that contravenes the UK Bribery Act.

18.2. The parties represent and warrant that neither they nor their personnel will, in connection with the relevant Agreement, make, offer or promise to make any payment or transfer of anything of value, directly or indirectly, to any (i) government official or employee (ii) political party (iii) intermediary for payment of any of the foregoing (iv) any other person or entity if such payment would contravene the UK Bribery Act.

18.3. Each party agrees to notify the other party and confirm the same promptly in writing as soon as reasonably practicable upon discovering any instance where it has, or any of its officers, employees or representatives have, failed to comply with any provisions of this clause 18.

**19. Modern Slavery Act**

19.1. Each party agrees to comply with the Modern Slavery Act 2015 and each party undertakes, warrants and represents that it shall maintain policies, procedures and guidelines that are intended and designed to prevent them doing or failing to do any act or thing that contravenes the Modern Slavery Act 2015.

**20. Personnel**

20.1. In the event that either party visits the premises of the other (the "Host"), the visiting party (the "Guest") shall be advised of all rules, regulations and practices they should comply with whilst on the Host's premises. The Guest's staff, agents and sub-Contractors shall comply with such rules and regulations whenever they are on the Host's premises. The Host shall take reasonable precautions to ensure the health and safety of the Guest's staff, agents and sub-Contractors whilst they are on its premises.

20.2. Without in any way restricting the right of an employee freely to accept employment and change employment, if either party (the "Hiring Party") induces the other party's employee engaged in the performance of the relevant Agreement to enter its service at any time during the term of the relevant Agreement or during a period of six months thereafter, then the Hiring Party shall pay to the other party an amount being equivalent to fifty percent (50%) of the employee's net annual salary, such sum being a genuine pre-estimate of the cost of the disruption that such inducement would cause to the efficient conduct of the affected party's business.

**21. Non Solicitation**

21.1. Both Parties acknowledge that during the period of the relevant Agreement and for a period of twelve (12) months after its termination or expiry, neither Party shall entice or seek to employ or engage directly or indirectly (without the other Party's prior written agreement) or make or seek to make any offer of employment or engagement to any of the other Party's staff, including any of its sub-Contractors who have dealt with the other Party in the course of the negotiation, conclusion and performance of the Agreement and also including any staff in the other Party's Group.

21.2. Each Party acknowledges that damages may not be an adequate remedy for that Party if the other Party breaches this clause 22 and the non-breaching Party will be entitled to seek injunctive relief and any other equitable remedies with respect to such breach.

21.3. If any employee of a Party leaves the employment of that Party as a result of a breach of this clause 22, and commences employment with, or provision of services to, the other Party or any other member of the other Party's Group it shall pay the non-breaching Party 50% of the higher of:

21.3.1. the annual salary (including any benefits-in-kind, bonus payments, commissions and other emoluments) of the employee at the date that they ceased to be an employee of non-breaching Party; or

21.3.2. the annual salary of the employee at the time they commence employment by the breaching Party or other member of the breaching Party's Group.

21.4. Each Party acknowledges that any such payment is by way of liquidated damages and is a reasonable and genuine pre- estimate of non-breaching Party's losses.

21.5. The Parties agree that the provisions of this clause 21 will not apply in the case of any such person responding without enticement to a job advertisement which is capable of being responded to by members of the public (or sections thereof) generally or to transfer of staff pursuant to the operation of Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) following termination of the relevant Agreement.

**22. TUPE**

22.1. Unless otherwise expressly agreed in a Services Schedule, the Company and Datrix agree that each Agreement shall not be treated as constituting a relevant transfer for the purpose of the Transfer of Undertaking (Protection of Employee) Regulations 2006 ("Transfer Regulations").

22.2. The Company shall indemnify and fully reimburse Datrix from and against all employment liabilities which Datrix may suffer, sustain, incur or pay which relates to or arises out of any act or omission by Company (or its agents or sub-Contractors) connected with or in respect of the Company employees (or sub-Contractors) including all Employment Liabilities relating to or arising out of the re-deployment or termination of employment of Company employees (or sub-Contractors) by Company upon the Commencement Date of each applicable Agreement.

22.3. In the event that the contract of employment of any of the Company's employees (or sub-Contractors) or any individual claiming to be an employee of Company transfers to Datrix pursuant to the Transfer Regulations upon the Commencement Date of any applicable Agreement, Datrix shall be entitled to dismiss such persons with immediate effect provided that it gives the Company prior written notice of its intent to do so, and the Company shall indemnify and keep indemnified Datrix from and against all Employment Liabilities which Datrix may suffer, sustain, incur or pay as a result of such dismissal.

22.4. If on the termination or assignment of an Agreement, howsoever arising, the contract of employment of any of Datrix employee is transferred to a new and/or substitute service provider ("Successor Service Provider") (whether pursuant to the Transfer Regulations or otherwise), The Company shall procure that Successor Service Provider shall (if so requested in writing by Datrix) enter into an appropriate deed of indemnity with Datrix to indemnify and keep indemnified Datrix from and against all Employment Liabilities which Datrix may suffer, sustain, incur or pay as a result of any act or omission of Successor Service Provider (or its agents or sub-Contractors) in respect of such transferred employee which arises during the period immediately following the termination or assignment of the applicable Agreement.

22.5. If the Transfer Regulations are to apply, and have been identified by the Company and brought to Datrix's attention prior to execution of a SOW, the parties shall agree the appropriate treatment and apportionment of costs prior to execution of the relevant Agreement.

**23. Compliance and Export**

23.1. The Company and Datrix shall each use reasonable endeavours to keep each other informed of any special requirements applicable to the Services, such as changes to regulatory compliance in their respective industries. To the extent Datrix is requested by the Company to make changes to the Services as a result of regulatory changes which are applicable to the Company, Datrix shall take reasonable steps to comply with such special requirements and to minimise any impact on Fees. Any such required changes will be managed via the RFC process, on a chargeable basis, unless otherwise agreed as appropriate between the Parties.

23.2. If the Company exports any Products, outside the country of installation, the Company assumes sole responsibility for complying with applicable laws and regulations and for obtaining any and all required export, re-export and import authorizations. The Company will not export or re-export any Products or any Third Party Products and/or any technical data in violation of US Export Administration regulations or other applicable export regulations.

23.3. The Company warrants that it will not export or re-export any Products (including Third Party Products) with knowledge that they will be used in the design, development, production or use of chemical, biological, nuclear or ballistic weapons or in a facility engaged in such activities. The Company further warrants that it will not export or re-export directly or indirectly to embargoed countries or sell Products to companies or individuals listed on the Denied Persons list published by the US Department of Commerce.

23.4. The Company will comply with EU Directives 2002/95EC (Restrictions on Hazardous Substances) and 2002/96 (Waste Electrical and Electronic Equipment) as applicable.

**24. Assignment**

24.1. Company may not assign any Agreement or otherwise transfer any rights or obligations under it except with Datrix's prior written consent.

**25. Sub-Contracting**

25.1. Datrix may delegate or sub-contract any obligation under the relevant Agreement provided Datrix shall be liable for all acts or omissions on the part of Datrix's sub-Contractors as though they were Datrix's acts and omissions.

**26. Warranty**

26.1. Datrix warrants that:

- 26.1.1. it will use reasonable care and skill in performing the Services and to a standard which conforms to generally recognised industry standards and practices;
- 26.1.2. all personnel involved in the performance of the Services shall be suitably skilled to perform the tasks assigned to them;
- 26.1.3. the Services will comply in all material respects with any technical specifications set out in the relevant Service Schedule; and
- 26.1.4. it is either the sole beneficial owner of all Intellectual Property Rights in any work product produced by its employees or sub-contractors in connection with or relating to each Agreement and/or the specifications of the Services or it has the right to licence the Intellectual Property Rights to the Company.

26.2. Datrix does not warrant that any result or objective, whether stated in the relevant Agreement or not, shall be achieved, be achievable or be attained at all or by a given completion date or any other date.

26.3. The Company warrants to Datrix that all the necessary licenses, permits, rights, consents, registrations, approvals and titles as are necessary in order for Datrix to use or host any software, hardware, documentation or other materials provided by the Company for Datrix's use in the provision of the Services to the Company, including any licenses that the Company is required to procure pursuant to any Services, shall be in full force and effect throughout the Term of the applicable Agreement and undertakes to indemnify and keep indemnified Datrix indemnified in full against any third party Intellectual Property claim relating to same.

**27. Force Majeure**

27.1. Neither party is responsible for failure to fulfil its obligations hereunder due to causes beyond its reasonable control that directly or indirectly delay or prevent its timely performance hereunder. Dates or times by which each party is required to render performance under the relevant Agreement shall be postponed automatically to the extent that the party is delayed or prevented from meeting them by such causes.

**28. Notices**

28.1. All notices made pursuant to the relevant Agreement must be made in writing. Any written notice to be given or made pursuant to the provisions of the relevant Agreement shall be sent postage prepaid by registered or recorded mail or reputable courier service, addressed to the other party's address stated above and in the case of notices to be sent to Datrix, shall be marked for the attention of the directors, and in the case of notices to be sent to Company, shall be marked for the attention of the directors. Unless otherwise provided in the relevant Agreement, all notices shall be deemed as given on the day of their receipt by the receiving party.

**29. Entire Agreement**

29.1. Each Agreement constitutes the entire agreement between the parties with respect to its subject matter and shall supersede all previous representations, agreements and other communications between the parties, both oral and written. The terms and conditions of the relevant Agreement shall prevail notwithstanding any variance with the terms and conditions of any order or purchase order submitted by Company.

**30. Law & Jurisdiction**

30.1. Subject to Clause 10, each party hereby irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any disputes arising out of or relating to any Agreement and that the laws of England shall govern each Agreement. Each party agrees that its rights and obligations under any Agreement are not subject to or governed by the United Nations Convention on Agreements for the International Sale of Goods.

**31. General**

31.1. If any provision of a relevant Agreement is adjudged by a court of competent jurisdiction to be invalid, void, or unenforceable, the parties agree that the remaining provisions shall not be affected thereby, and that the remainder of the applicable Agreement shall remain valid and enforceable. No waiver by either party of any term hereof shall constitute a waiver of any such term in any other case whether prior or subsequent thereto. No single or partial exercise of any power or right by either party shall preclude any other or further exercise thereof. No Agreement or Agreement may be changed, modified, amended, released or discharged except by a subsequent written agreement or amendment executed by duly authorised representatives of Datrix and Company. A person who is not a party to the applicable Agreement has no rights under the Agreements (Rights of Third Parties) Act 1999 to enforce any term of the applicable Agreement except as expressly set out herein, but this does not affect any right or remedy that such third party may have without reference to the Agreements (Rights of Third Parties) Act 1999.