

TERMS AND CONDITIONS

1. Definitions and interpretation

1.1 Definitions

In this Agreement the following words and expressions shall have the following meanings:

"Authorised User"	any of Your employees or contract staff who access the Products;
"Business Day"	each day which is not a Saturday or Sunday or a bank or public holiday in England;
"Contract Year"	each 12 month period beginning on the Effective Date;
"Customer Data"	all data, information and material input or uploaded to any Product or transmitted through the Service by You and/or any Authorised User;
"Customer Materials"	any material provided or made available by or on behalf of You to Supplier for the purposes of incorporation into any Product and/or the Service for You or other permitted use by Supplier in connection with any Professional Services, but excluding Customer Data;
"Confidential Information"	<p>all information (whether written, oral or in some other form) disclosed to or obtained by one party (whether directly or indirectly) from the other (whether before or after the signing of this Agreement), including all information relating to that other's or its Group Members' business, operations, systems, processes, products, trade secrets, know how, contracts, finances, plans, strategies or current, former or prospective clients, customers, partners or suppliers (together with copies made of any of the foregoing) and which information is marked as being confidential or might reasonably be assumed to be confidential, but excluding information which:</p> <ul style="list-style-type: none">(a) is available to the public other than because of any breach of this Agreement;(b) is, when it is supplied, already known to whoever it is disclosed to in circumstances in which they are not prevented from disclosing it

to others; or

- (c) is independently obtained by whoever it is disclosed to in circumstances in which they are not prevented from disclosing it to others;

"Effective Date"	the date set out on the Order Form;
"Fees"	the Profile Fees and the Transaction Fees;
"Group Member"	at the relevant time, in relation to any entity, an entity which, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with that entity, where "control" means holding, directly or indirectly, a majority of the voting rights in it, or the power to direct or cause the direction of its management, policies or operations, whether through holding of voting rights, by contract or otherwise;
"Intellectual Property Rights"	patents, patentable rights, copyright, design rights, utility models, trade marks (whether or not any of the above are registered), trade names, rights in domain names, rights in inventions, rights in data, database rights, rights in know-how and confidential information, and all other intellectual and industrial property and similar or analogous rights existing under the laws of any country and all pending applications for and right to apply for or register the same (present, future and contingent, and including all renewals, extensions, revivals and all accrued rights of action);
"Modules"	the third party content modules identified on the Order Form;
"Module Licence Terms"	the third party licence terms applicable to the Module included on Supplier's website as may be updated from time to time;
"Module Licensor"	the owner of the content of the Module;
"Order Form"	the Order Form to which these terms and conditions are attached or otherwise incorporating these terms and conditions;
"Product"	the Supplier's PassFort Smart Policy platform containing the Modules;

"Profile"	any individual or organization profile that You select to be under management by the Services;
"Profile Fees"	the fees payable for the management of Profiles as more particularly described on the Order Form;
"Quarter"	each three month period beginning on the Effective Date;
"Service"	the service to be provided by Supplier consisting of provision of access to the Products on a software as a service basis;
"Software"	any software owned by or licensed to Supplier or any of its Group Members and which forms part of, or is used in the provision of, any Product or the Service; and
"Supplier Content"	all data, information and material owned by or licensed to Supplier or any of its Group Members and comprised within any Product and/or the Service, but excluding Customer Data and Customer Materials;
"Transaction"	a verification check carried out through the Product;
"Transaction Fees"	the fees to be paid for a Transaction as set out on the dashboard within the Product from time to time; and
"You" or "Your"	the customer entering into the Order Form.

1.2 Interpretation

In this Agreement:

- (a) words in the singular include the plural;
- (b) reference to a person includes a legal person (such as a limited company) as well as a natural person;
- (c) clause headings are for convenience only and shall not affect the construction of this Agreement;
- (d) reference to **"including"** or any similar terms in this Agreement shall be treated as being by way of example and shall not limit the general applicability of any preceding words; and

- (e) reference to any legislation shall be to that legislation as amended, extended or re-enacted from time to time and to any subordinate provision made under that legislation.

2. Provision of Service and Modules

- 2.1 Following the Effective Date, Supplier shall set-up the Service for You in respect of the Product which You are licensed to access and use under this Agreement, as set out in Order Form.
- 2.2 You acknowledge and agree that the Product contains Modules that You have selected. Where expressly stated, Supplier has the right from the Module Licensor to include the Module within the Product subject to the Module Licence Terms. You agree to comply with all applicable Module Licence Terms as if they were set out within the main body of these terms and conditions.
- 2.3 Unless otherwise expressly stated Supplier does not have the right from the Module Licensor to include the Module within the Product and accordingly, in respect of such Modules:
 - (a) You warrant and represent that You have a valid, written licence from the Module Licensor to permit Supplier to incorporate the Module into Your Product and to allow You to access and use the Module within Your Product;
 - (b) no sums shall be due from the Supplier to You and/or the Module Licensor in respect of the licence under Condition 2.3(a);
 - (c) You shall comply with the licence terms You agree with the Module Licensor; and
 - (d) You shall provide a copy to the Supplier the licence terms You agree with the Module Licensor
 - (e) You shall immediately notify Supplier if Your licence to incorporate and/or use a Module within the Product ceases for any reason whatsoever and You agree that in such circumstances, the Supplier shall remove the Module from the Product.

3. Grant of licence and scope of authorised use

- 3.1 Subject to full payment of the applicable Fees and subject to the other provisions of this Agreement, You are granted a non-transferable, non-exclusive licence, for the term of this Agreement, to access and use the Product and Service in accordance with any other restrictions there set out. Without prejudice to clause 3.2, You may not sub-license the right to access and/or use any Product or the Service to any third party. Except as expressly set out in this Agreement, all rights in and to the Product(s), Service (including the Supplier Content but excluding Customer Data and Customer Materials) and Software are reserved to Supplier.

- 3.2 Only You and the Authorised Users are licensed to access and use the Product(s) and Service and solely for Your internal business purposes.
- 3.3 You shall not:
- (a) except as expressly permitted by this Agreement, permit any third party to access or use any Product or the Service or use the same on behalf of any third party (which includes operating any form of facility on behalf of any third party or operating a software bureau or similar service);
 - (b) copy, translate, modify, adapt or create derivative works from any Product or the Service;
 - (c) create Internet "links" to the Service or "frame" or "mirror" any Supplier Content on any other server or wireless or Internet-based device;
 - (d) attempt to discover or gain access to the source code for the Software or reverse engineer, modify, decrypt, extract, disassemble or decompile the Software (except strictly to the extent that You are permitted to do so under applicable law in circumstances under which Supplier is not lawfully entitled to restrict or prevent the same), including in order to:
 - (i) build a competitive product or service;
 - (ii) build a product using similar ideas, features, functions or graphics of the Service; or
 - (iii) copy any ideas, features, functions or graphics of the Service;
 - (e) attempt to interfere with the proper working of any Product, the Service or Software and, in particular, must not attempt to circumvent security, licence control or other protection mechanisms, or tamper with, hack into or otherwise disrupt any Product, the Service or Software or any associated website, computer system, server, router or any other internet-connected device;
 - (f) employ any hardware, software, device or technique to pool connections or reduce the number of devices or users that directly access or use any Product and/or the Service (sometimes referred to as 'virtualisation', 'multiplexing' or 'pooling') in order to circumvent any restrictions on scope of authorised use contained in this Agreement;
 - (g) obscure, amend or remove any copyright notice, trade mark or other proprietary marking on, or visible during the operation or use of, any Product, the Service or Software; or
 - (h) use the Service to:
 - (i) upload, store, post, email, transmit or otherwise make available any content that infringes any Intellectual Property Rights or data

protection, privacy or other rights of any other person, is defamatory or in breach of any contractual duty or any obligation of confidence, is obscene, sexually explicit, threatening, inciteful of violence or hatred, blasphemous, discriminatory (on any ground), knowingly false or misleading, or that does not comply with all applicable laws and regulations or is otherwise objectionable or prohibited as set out in any acceptable use policy published on Supplier's website from time to time ("**Prohibited Content**");

- (ii) impersonate any person or entity or otherwise misrepresent Your relationship with any person or entity;
- (iii) forge headers or otherwise manipulate identifiers in order to disguise the origin of any Customer Data transmitted through the Service;
- (iv) engage in any fraudulent activity or further any fraudulent purpose;
- (v) provide material support or resources (or to conceal or disguise the nature, location, source, or ownership of material support or resources) to any organisation(s) designated by the government of the United Kingdom or any foreign government as a foreign terrorist organisation;
- (vi) "stalk" or otherwise harass another person;
- (vii) provide false identity information to gain access to or use the Service;
- (viii) attempt to gain unauthorised access to any Product or the Service or its related systems or networks; and/or
- (ix) collect or store personal data about other users in connection with the prohibited conduct and activities set out in clauses 3.3(h)(i) to (viii);

and shall not permit any third party to do any of the foregoing.

- 3.4 You understand that the Product, the Service and/or Software may include security components that permit digital materials to be protected, and that use of these materials is subject to usage rules set by Supplier and/or content providers who provide content to the Products and/or the Service. You may not attempt to override or circumvent any of the usage rules embedded into the Service. Any unauthorised reproduction, publication, further distribution or public exhibition of the Supplier Content, in whole or in part, is strictly prohibited.
- 3.5 You understand that the Product and Service are not intended to be used as the sole basis for any business decision and are based upon data which is provided to the Supplier by third parties, the accuracy and/or completeness of which it would not be possible and/or economically viable for the Supplier to guarantee. The Product(s) and/or Services also involve models and techniques based on statistical analysis,

probability and predictive behaviour. The Supplier is therefore not able to accept any liability, other than under clause 6.1, for any:

- (a) Inaccuracy, incompleteness or other error in the Supplier Content which arises as a result of data provided to the Supplier by any third parties;
- (b) Failure in the Product or Services to achieve any particular result for You.

3.6 You shall permit the Supplier or its authorised agents to at all reasonable times during the term of this agreement and for a period of 3 months after the termination of this Agreement to audit the Products and Services in order to establish:

- (a) the number of Profiles under management and the number of Transactions which have taken place; or
- (b) whether the terms of this Agreement have been and are being complied with;

if any of the audits referred to in sub-clauses (a) and (b) above reveal that You have underpaid any fees payable for use of the Products and Services or misused the Product or Services, then without prejudice to the Supplier's other rights:

- (c) You shall pay to the Supplier an amount equal to the underpayment within 10 Business Days of the date of the relevant audit;
- (d) the Supplier shall be entitled to suspend access to the Product(s) and Services while the parties discuss what action should be taken.

4. Administrator, Authorised Users and Customers

4.1 You shall designate one contact and one alternate as the responsible party for communication with Supplier during the term of this Agreement (Your "**System Administrator**"). Your System Administrator shall have the authority to bind You, except that another duly authorised representative of You may change Your System Administrator by giving written notice to Supplier in accordance with clause 14.2.

4.2 Your System Administrator may establish accounts for Authorised Users. You are solely responsible for determining the skill, competence, character and other attributes of all Authorised Users.

4.3 You shall ensure that each Authorised User shall, as a condition of being granted access to any Product and/or the Service, be required by Your System Administrator to acknowledge the obligations on You under this Agreement respecting authorised use (and restrictions on use) of the Product(s) and Service and agree to comply with the same. You shall immediately notify Supplier in the event that You become aware of any breach of the terms of this Agreement or Supplier's Privacy and Security Policies by any Authorised User.

4.4 You shall be responsible for all access to and use of the Product(s) and Service by

Authorised Users. You shall be responsible for ensuring the security and confidentiality of all log-on identifiers, including usernames and passwords, assigned to, or created by, You or any Authorised User in order to access or use any Product and/or the Service ("ID") You acknowledge and agree that You will be solely responsible for all activities that occur under such ID. You shall promptly notify Supplier upon becoming aware of any unauthorised access to or use of any Product and/or the Service, and provide all reasonable assistance to Supplier to bring an end to such unauthorised access or use.

5. Fees, invoicing and payment

- 5.1 Profile Fees will be invoiced Quarterly in advance and shall be calculated based on the number of Profiles to be managed at the beginning of the Quarter. At the end of each month in the Quarter, the Supplier shall reconcile the number of Profiles managed throughout the Quarter with the Profile Fee invoiced at the beginning of the Quarter, and any additional Profile Fee to reflect additional Profiles shall be invoiced by the Supplier, or at the Supplier's discretion deducted from Your Transaction Fee account.
- 5.2 Transaction Fees are pre-paid by You within Your account and represent a number of Transaction credits which are purchased in advance then cycled through according to Your usage. A billing dashboard is available within the Product to monitor Your Transaction Fee credit balance.
- 5.3 Unless otherwise expressly provided in this Agreement, all amounts referred to in this Agreement are exclusive of value added tax or other applicable sales tax which, where chargeable by Supplier, shall be payable by You at the rate and in the manner prescribed by law.
- 5.3 The Supplier may increase the Fees on 30 days' written notice to You.
- 5.4 Invoices are payable, in full, upon delivery and without deduction, set off or withholding of any kind. In the event of any dispute as to the amount of an invoice, You shall pay the amount in full pending the resolution of any dispute and Supplier shall make any adjustment due immediately upon such resolution.
- 5.5 If Supplier has not received full and cleared payment for the Fee within 5 Working Days after the due date, and without prejudice to any other rights and remedies of Supplier, Supplier may without liability to You:
 - (a) suspend provision of the Services; and
 - (b) charge You interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month).

6. Warranties

6.1 Supplier warrants that:

- (a) it has the right to enter into this Agreement and to provide the Service as contemplated by this Agreement;
- (b) the Product and Service shall, under normal operating conditions, enable You to build and manage compliance profiles for individuals and organisations, and allow You to make Your own decisions based on those profiles.

6.2 If any of the warranties in clause 6.1 is breached, You must notify Supplier as soon as possible. You must give Supplier a reasonable time to fix the problem, including (in Supplier's discretion) by making available a corrected version of the Product and/or Service (as the case may be) or a reasonable way to work around the problem that is not materially detrimental to You and/or by re-performing any relevant services. This will be done without any additional charge to You. If Supplier is able to do this within a reasonable time, this shall be Your sole and exclusive remedy in relation to such breach and Supplier will, subject to clause 9.1, have no other obligation or liability in relation to such breach.

6.3 Supplier does not control the content posted to or via the Service and, in particular, does not control the Customer Data and, as such, Supplier does not make or give any representation or warranty as to the accuracy, completeness, currency, correctness, reliability, integrity, usefulness, quality, fitness for purpose or originality of any of the foregoing content or data.

6.4 Except as expressly set out in this Agreement and subject only to clause 9.1, no implied conditions, warranties or other terms, including any implied terms relating to satisfactory quality or fitness for any purpose, will apply to the Product, Service (including any Supplier Content) or to anything supplied or provided by Supplier under this Agreement. In particular, Supplier does not warrant that the operation of any Product or the Service will be uninterrupted, contaminant-free or error-free, or that they will meet Your requirements.

7. Intellectual Property Rights

7.1 Nothing in this Agreement shall cause the ownership of any Intellectual Property Rights belonging to one party to be transferred to the other.

7.2 Supplier and/or its licensors shall, as between the parties, remain the owner of all Intellectual Property Rights in Supplier's brands, trade marks and logos, the Product, the Service (including the Supplier Content but excluding Modules, Customer Data and Customer Materials) and the Software. Except as expressly permitted by this Agreement, You may not use any of Supplier's Intellectual Property Rights without Supplier's prior written consent.

7.3 You shall promptly bring to the attention of Supplier any improper or wrongful use

of any Intellectual Property Rights of Supplier which comes to Your notice. You shall assist Supplier in taking all steps to defend Supplier's Intellectual Property Rights, but not institute legal proceedings of Your own accord.

- 7.4 You and/or Your licensors shall, as between the parties, remain the owner of all Intellectual Property Rights in the Customer Data and Customer Materials. You grant Supplier, free of charge, a royalty-free, worldwide, non-exclusive licence to use the Customer Data and Customer Materials only to such extent as is necessary to enable Supplier to provide the Service and to perform its obligations under this Agreement. You warrant that You own the Customer Data and Customer Materials and/or are otherwise entitled to grant the foregoing licence. If this Agreement is terminated, the foregoing licence will automatically terminate.

8. Indemnities

- 8.1 Supplier shall indemnify You against all damages and legal costs finally awarded against You by a court of competent jurisdiction and/or amounts paid by You further to a final settlement approved by Supplier, together with associated legal fees reasonably incurred by You, as a result of any claim by a third party that the access and use, in accordance with this Agreement, by You of any Product and/or the Service infringes the Intellectual Property Rights of any third party.

- 8.2 If Your access or use, in accordance with the terms of this Agreement, of any Product and/or the Service is, or in Supplier's reasonable opinion is likely to become, enjoined as a result of a claim for which Supplier is obliged to indemnify You further to clause 8.1, then Supplier shall, at its sole option, and at its own cost and expense, make all reasonable efforts, as soon as reasonably possible to:

- (a) procure for You the continuing right to access and use such Product and/or the Service (as the case may be), in accordance with this Agreement, without infringement; or
- (b) replace or modify such Product and/or the Service (as the case may be) with software and/or services of substantially equivalent specification so as to avoid the infringement;

and provided Supplier does so, it shall have no further liability to You in respect of the infringement claim.

- 8.3 The indemnity in clause 8.1 shall be conditional upon:

- (a) You promptly notifying Supplier in writing of any claim in respect of which Supplier is obliged under this agreement to indemnify and of which You have notice (an "**Indemnified Claim**");
- (b) You not admitting any liability or agreeing to any settlement or compromise of an Indemnified Claim without the prior written consent of Supplier;

- (c) Supplier being, at any time from notification in accordance with clause 8.3(a), at Supplier's request, cost and expense, entitled to assume exclusive conduct of the Indemnified Claim (which shall include the right to conduct any proceedings or action in relation to, negotiate the settlement of, and to conduct all discussions and dispute resolution efforts in connection with the Indemnified Claim, provided that no settlement of a claim which would involve any admission of fault or liability on Your part shall be entered into without Your prior written consent); and
- (d) You, at Supplier's request, cost and expense, giving Supplier all reasonable assistance in connection with the conduct of the Indemnified Claim.

8.5 You agree that clauses 8.1, 8.2 and 8.3 shall not apply in relation to any Module.

8.4 You shall indemnify Supplier against all loss or damage that Supplier incurs or suffers however arising as a result of or in connection with:

- (a) any failure by You to obtain or renew a licence to incorporate and/or use a Module under clause 2.2;
- (b) any Customer Data or Supplier's use and/or possession, in accordance with this Agreement, of any Customer Materials; and/or
- (c) any claim by a third party as a result of Your use of any Product and/or the Service.

9. Exclusions and limitations

9.1 Nothing in this Agreement limits or excludes either party's liability:

- (a) for death or personal injury caused by its negligence;
- (b) for fraudulent misrepresentation or for any other fraudulent act or omission;
- (c) for breach of clauses 10.1;
- (d) to pay sums properly due and owing to the other in the normal course of performance of this Agreement; or
- (e) for any other liability which may not lawfully be excluded or limited.

9.2 Subject to clause 9.1, Supplier shall not be liable (whether from breach of contract, tort (including negligence), breach of statutory duty or otherwise) for any: (a) loss of profit; (b) loss of sales, turnover, revenue or business; (c) loss of customers, contracts or opportunity; (d) loss of or damage to reputation or goodwill; (e) loss of anticipated savings; (f) loss of any software or data; (g) loss of use of hardware, software or data; (h) loss or waste of management or other staff time; or (i) indirect, consequential or special loss arising out of or relating to this Agreement whether or not advised of the possibility of such losses.

- 9.3 Subject to clause 9.1, Supplier shall not be liable, whether in contract, tort (including negligence), breach of statutory duty, under any indemnity or otherwise, for any loss, damage, expense or liability incurred or sustained as a result of any:
- (a) use of any Product and/or the Service except for its normal intended purpose;
 - (b) adaptation or modification of any Product and/or the Service, or integration or combination with any other equipment, software, product or material not supplied by Supplier, in each case carried out by anyone other than the Supplier or without Supplier's express written consent;
 - (c) compliance by Supplier with any design, specification or instructions provided by You or on Your behalf;
 - (d) any Module, Customer Data and/or Customer Materials.
- 9.4 Subject to clauses 9.1 and 9.2, Supplier's total liability arising out of or relating to this Agreement or its subject matter and to anything which it has done or not done in connection with the same (whether from breach of contract, tort (including negligence), breach of statutory duty or otherwise) shall be limited, in respect of each Contract Year, to the total Fees paid by You under this Agreement during such Contract Year.

10. Confidentiality and Data Protection

- 10.1 Subject to clause 10.2, each party shall:
- (a) keep confidential all Confidential Information of the other party which it receives in connection with this Agreement;
 - (b) apply to it no lesser security measures and degree of care than those which it takes in protecting its own Confidential Information and in any event no less than that which a reasonable person or business would take in protecting its own confidential information;
 - (c) only use such Confidential Information as strictly necessary for the performance of, or exercise of its rights under, this Agreement;
 - (d) not disclose such Confidential Information to any third party (other than its professional advisers, officers, employees, agents, contractors and sub-contractors on a 'need to know' basis as strictly required for the purposes of this Agreement and subject to each such person being bound by an obligation of confidentiality equivalent to this clause 10); and
 - (e) promptly, upon request and, in any event, upon termination of this Agreement (for whatever reason), return to the other party all materials (in whatever form) incorporating, embodying or recording any such Confidential Information in its possession or control and, if requested by the other party,

certify in writing that it has done so.

- 10.2 Either party may disclose the other's Confidential Information to the extent required by law or by any court, tribunal, regulator or other authority with competent jurisdiction to order its disclosure (but only to the extent of such requirement).
- 10.3 You acknowledge and agree that the Product(s), Service (including the Supplier Content but excluding Customer Data and Customer Materials) and Software and the terms of this Agreement including, in particular, the pricing, constitute Confidential Information of Supplier.
- 10.4 In clauses 10.4, 10.5 and 10.6, "**process**", "**personal data**", "**data controller**" and "**data processor**" will have the same meanings as in the Data Protection Act 1998.
- 10.5 Each party will:
- (a) obtain and maintain all appropriate registrations and consents under the Data Protection Act 1998 in order to allow that party to perform its obligations under this agreement;
 - (b) process personal data in accordance with the Data Protection Act 1998 and other applicable legislation; and
 - (c) use its reasonable efforts to make sure no act or omission by it, its employees, contractors or agents results in a breach of the obligations of either party under the Data Protection Act 1998 and other applicable legislation.
- 10.6 In relation to personal data disclosed by one party to the other, where the disclosing party is the data controller and the receiving party is the data processor, the party acting as data processor will:
- (a) process the personal data only in accordance with the data controller's reasonable instructions;
 - (b) ensure that all personal data provided or disclosed by the data controller is kept confidential and reasonably secure from disclosure to unauthorised third parties;
 - (c) take reasonable precautions to prevent unauthorised or unlawful processing of the personal data and accidental loss of or damage to the personal data;
 - (d) not cause or permit the personal data to be transferred outside the European Economic Area without the prior written consent of the data controller; and
 - (e) return or destroy (at the data controller's election) the personal data on termination of this agreement for any reason.

11. Term and termination

- 11.1 This Agreement shall commence on the Effective Date and shall continue for a Contract Year and shall then continue for further Contract Years, unless either party gives the other not less than 60 days' written notice before the end of the then current Contract Year.
- 11.2 Either party may terminate this Agreement, at any time, immediately by giving the other written notice if the other:
- (a) materially breaches any term of this Agreement and it is not possible to remedy that breach;
 - (b) materially breaches any term of this Agreement and it is possible to remedy that breach, but the other fails to do so within 30 days of being requested in writing to do so; or
 - (c) becomes insolvent, makes composition with its creditors, has a receiver or administrator of its undertaking or the whole or a substantial part of its assets appointed, or an order is made, or an effective resolution is passed, for its administration, receivership, liquidation, winding-up or other similar process, or has any distress, execution or other process levied or enforced against the whole or a substantial part of its assets (which is not discharged, paid out, withdrawn or removed within 28 days), or is subject to any proceedings which are equivalent or substantially similar to any of the foregoing under any applicable jurisdiction, or ceases to trade or threatens to do so.

For the purposes of this clause 11.2, in order for it to be possible to remedy a breach it must be possible to take steps so as to put the other party into the same position which (save as to the date) it would have been in if the breach had never occurred.

- 11.3 Without prejudice to clause 11.1, Supplier may, in addition, and without liability, terminate this Agreement, or alternatively, may suspend access to and use of any Product and/or the Service, by giving You written notice if:
- (a) any provision of clause 3.3 is breached; and/or
 - (b) You are in persistent or repeated breach of any of Your obligations under this Agreement (whether or not it is the same obligation that is breached and whether or not such breaches are remedied).

12. Consequences of termination

- 12.1 Upon termination of this Agreement for any reason:
- (a) You shall immediately cease to access, and discontinue all use of, the Product(s) and Service; and
 - (b) all amounts payable to Supplier by You shall become immediately due and

owing. For the avoidance of doubt, no refund of Fees paid in advance shall be due in respect of any unexpired portion of the then-current term.

12.2 The termination of this Agreement for any reason will not affect:

- (a) any accrued rights or liabilities which either party may have by the time termination takes effect; or
- (b) the coming into force or the continuation in force of any of its provisions that expressly or by implication are intended to come into force or continue in force on or after the termination. Without prejudice to the foregoing, clauses 1, 5, 6, 7, 8, 9, 10, 12 and 14 shall survive termination of this Agreement.

13. Force majeure

Neither party will be liable to the other for any failure or delay in performing its obligations under this agreement which arises because of any circumstances which it cannot reasonably be expected to control (which shall include Act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargoes, strikes, lock-outs or other industrial actions or trade disputes (whether involving personnel of Supplier or a third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery or breakdown in machinery, or interruption or failure of the Internet or of any network, telecommunications, power supply or infrastructure, or any provider of any of the foregoing, but shall not include shortage or lack of available funds on Your part), provided that it:

- (a) notifies the other in writing as soon as reasonably practicable about the nature and extent of the circumstances and likely effects;
- (b) uses reasonable efforts to mitigate the effects of the circumstances so as to minimise or avoid any adverse impact on the other; and
- (c) uses reasonable efforts to resume performance as soon as reasonably practicable.

14. General

14.1 You may not sub-license or assign, sub-contract or delegate any or all of Your rights or obligations under this Agreement without the prior written consent of Supplier.

14.2 All notices and consents relating to this Agreement (but excluding any proceedings or other documents in any legal action) must be in writing. Notices must be sent to the address of the recipient set out in the Order Form or otherwise notified by the relevant party in accordance with this Agreement. Notices shall be sent by hand, by first class recorded delivery or registered post or other form of certified or registered mail (and sent by air mail if posted to or from a place outside the United Kingdom),

and shall be treated as having been delivered:

- (a) if sent by hand, when delivered; and
- (b) if sent by certified or registered mail, two days after the date of posting (or, if sent by air mail, seven days after the date of posting).

14.3 Unless the parties expressly agree otherwise in writing, if a party:

- (a) fails to exercise or delays exercising or only exercises partially any right or remedy provided under this Agreement or by law; or
- (b) agrees not to exercise or to delay exercising any right or remedy provided under this Agreement or by law;

then that party shall not be deemed to have waived and shall not be precluded or restricted from further exercising that or any other right or remedy.

14.4 If any provision of this Agreement is held for any reason to be ineffective or unenforceable, this shall not affect the validity or enforceability of any other provision of this Agreement or this Agreement as a whole. If any provision of this Agreement is so found to be ineffective or unenforceable but would be effective or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it effective and enforceable.

14.5 All variations to this Agreement must be agreed, set out in writing and signed on behalf of both parties before they take effect.

14.6 Nothing in this Agreement shall or is intended to create a partnership or joint venture between the parties, constitute one party as agent of the other or give either party authority to make or enter into commitments, assume liabilities or pledge credit on behalf of the other party. Neither party may act as if it were, or represent (expressly or by implying it) that it is, an agent of the other or has such authority.

14.7 A person who is not a party to this Agreement shall not have any rights under or in connection with it, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise, except that a Module Licensor shall be entitled to enforce any breach of the Module Licence Terms.

14.8 It is a condition of this Agreement that, in pre-contract negotiations and in the exercise of its rights or the performance of its obligations under this Agreement, each party shall at all times ensure that it complies with the terms of the Bribery Act 2010 and that it does not commit (or procure the commission of) any breach of that Act.

14.9 This Agreement sets out all of the terms that have been agreed between the parties in relation to the subjects covered by it, and supersedes all previous agreements

between the parties relating to such subjects. Provided always that nothing in this clause 14.9 will operate to limit or exclude any liability for fraud or fraudulent misrepresentation, no other representations or terms shall apply or form part of this Agreement and each party acknowledges that it has not been influenced to enter this Agreement by, and shall have no rights or remedies (other than for breach of contract) in respect of, anything the other party has said or done or committed to do, except as expressly recorded in this Agreement.

- 14.10 This Agreement is governed by English law. Both parties submit to the exclusive jurisdiction of the English courts in relation to any dispute arising out of or in connection with this Agreement or its subject matter, but Supplier is also entitled to apply to any court worldwide for injunctive or other remedies in order to protect or enforce its Intellectual Property Rights.

Service Level Agreement

Availability of the Service

The Service shall be available 99.5%, measured monthly, excluding holidays and weekends and scheduled maintenance. If the Customer requests maintenance during these hours, any uptime or downtime calculation will exclude periods affected by such maintenance. Downtime will not accrue where the non-availability is due to:

- a) A cause beyond the Supplier's reasonable control;
- b) Any scheduled, notified or emergency downtime;
- c) A fault on the Customer's network or own equipment configuration;
- d) An fault or incident caused within the Customer's own infrastructures or configuration of said infrastructures causing the suspension of the Service and/or hardware failure;
- e) A fault/bug in the Customer's own software such as firmware, operating system, infrastructure software or the Customer's own infrastructures or configuration of such infrastructures causing suspension of the Services and/or hardware failure;
- f) Any incidents and downtime caused by the Customer's own management of the Service;
- g) Third Party network issues or suspensions;
- h) Downtime caused by the Customer accessing the Service over the internet, where the downtime is directly attributable to the public network itself.

The Customer's sole and exclusive remedy, and the Supplier's entire liability, in connection with availability shall be that for downtime causing the availability to fall below 99.5%, Supplier will credit Customer pro-rata for the downtime each month, to a maximum of 5% of the Profile Fees a month.

Downtime shall begin to accrue as soon as the Customer (with notice to Supplier) recognizes that downtime is taking place, and continues until availability is restored. In order to receive downtime credit, Customer must notify Supplier in writing within 24 working hours from the time of downtime, and failure to provide such notice will forfeit the right to receive downtime credit.

Such credits may not be redeemed for cash. Supplier's blocking of data communications or other Service in accordance with its policies shall not be deemed to be a failure of Supplier to provide adequate service levels under this Agreement.

Performance Monitoring

Supplier will continuously monitor its performance and compliance with the Service Levels. Throughout the Term, Supplier will make available its uptime status to the Customer upon request.

Technical Contacts and Incident Response

Supplier shall provide regularly staffed email and phone support in the UK during working hours of 9am to 6pm Monday to Friday excluding Bank Holidays. The contact details and response time for general support are as detailed below:

Query Level	Contact Details	Response Time
General	support@passfort.com 020 3174 2741	24 working hours
Urgent	henry@passfort.com +44 (0) 7515 053 971	3 working hours