

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

1. Definitions and Interpretation

1.1 In these terms and conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Agreement”	means these terms and conditions, together with the Order(s), Scopes of Work (if any), and any other documents expressly incorporated by reference;
“Business Day”	means a day other than Saturday, Sunday or a public holiday, when banks in London are open for business;
“Change”	means a change to the scope or manner of performance of the Services, or any other change to the performance or terms of this Agreement;
“Charges”	means the charges payable for the Services, as set out in the Order and as may be varied by these terms and conditions;
“Confidential Information”	means and any all technical and commercial information concerning the business, affairs, customers, suppliers, operations, processes, specifications, inventions, know-how, and/or Intellectual Property Rights of a Party, together with any information that a reasonable business person would regard as confidential, which is disclosed by one Party to the other Party and/or which the other Party becomes aware of as a result of or in connection with the performance of the Agreement;
“Customer”	means the legal person named as the Customer in the Order;
“Customer Materials”	means the Instruments and other items of equipment, tools, parts, documents, information and materials provided by or on behalf of the Customer for use in connection with the performance of the Services;
“Data Protection Laws”	means applicable laws and regulations governing the processing of personal data of natural persons, including without limitation the Data Protection Act 2018 and the General Data Protection Regulation 2016/679 as retained in the UK by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419);
“Deliverables”	means the tangible outputs of the Services to be supplied to the Customer, including calibration certificates and test reports;
“Force Majeure”	means any cause that is beyond the reasonable control of the affected Party including, but not limited to: power failure; internet service provider failure; strikes, lock-outs or other industrial action suffered by the Party or its suppliers or contractors; civil unrest; fire; explosion; flood; storms; earthquakes; pandemic; subsidence; acts of terrorism (threatened or actual); acts of war; governmental action; epidemic or other natural disaster;
“Instrument”	means those instruments delivered to the Supplier by or on behalf of the Customer, or otherwise made accessible by the Customer, for the performance of the Services;
“Intellectual Property Rights”	means any and all patents, utility models, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs (both registered or unregistered), database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights in any jurisdiction, whether registered or unregistered;
“Order”	means the written order for the Services, which may be set out in (i) a quotation provided by the Supplier and signed or otherwise accepted by the Customer; (ii) a purchase order issued by the Customer; or (iii) another form of order agreed and signed by both Parties. For the purposes of the Agreement, the Order shall include any associated Scope of Work;
“Scope of Work”	means a document detailing the scope of the Services to be performed and associated technical and commercial terms, which shall be appended to or incorporated by reference within an Order;
“Service Intervals”	means the intervals at which the Services shall be performed in respect of particular Instruments, as set out in the Order;
“Service Levels”	means the service levels specified in the applicable Order and/or Scope of Work;
“Service Term”	means the minimum service term committed to by the Customer, as set out in the Order (the Initial Service Term) and any renewal period pursuant to clause 4.2;

“Services”	means any the services to be performed by the Supplier, as specified in the Order, type of calibration check, testing, repair or maintenance of Instruments, and/or training in relation to the use of any of them;
“Supplier”	means Avon Dynamic Calibration Limited a company incorporated and registered in England and Wales (company number 5268744), with its registered office at Unit 1, The Old Mill, Chapel Lane, Warmley, Bristol, BS15 4NQ;
“UKAS”	means the UK’s National Accreditation Body, responsible for determining the technical competence and integrity of organisations such as those offering testing, calibration and certification services (and references to UKAS shall include any successor body); and
“VAT”	means value added tax chargeable under the Value Added Tax Act 1994 and any similar, replacement, or additional tax.

1.2 Unless the context otherwise requires, each reference in these terms and conditions to:

- 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- 1.2.2 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 and includes any subordinate legislation made under that statute or provision from time to time;
- 1.2.3 a clause is a reference to a clause of these terms and conditions, and clause headings are used for convenience only and shall not affect the interpretation of the terms and conditions;
- 1.2.4 a “Party” or the “Parties” refer to the Supplier and the Customer and their authorized representatives and assigns;
- 1.2.5 words signifying the singular shall include the plural and vice versa; and
- 1.2.6 any phrase or term introduced by the words **including, include, in particular** or any similar expression, shall be construed as illustrative only and shall not limit the sense of the words preceding those expressions.

2. Orders and application of these terms

- 2.1 Each Order constitutes an offer by the Customer to purchase the Services on and subject to these terms and conditions. Where the Customer delivers up Instruments for the performance of the Services, the same shall be treated as an offer to purchase the Services based on the Supplier’s quotation and subject to these terms and conditions.
- 2.2 An Order shall be deemed to be accepted by the Supplier on the earlier of: (i) the Supplier countersigning the Order; (ii) the Supplier issuing written acceptance of the Order; or (iii) the Supplier commencing performance of the Services set out in the Order.
- 2.3 Each Order shall form part of the Agreement, though each Order shall be separate and the completion, termination or other determination of one Order shall not affect the continuing in force of any other Order.
- 2.4 Any samples, drawings, descriptive matter or advertising issued or made available by the Supplier are illustrative only and shall not form part of the Agreement.
- 2.5 The Supplier may issue quotations and proposals to the Customer in connection with the supply of services, including in response to any request for services made by the Customer. Such quotations and proposals do not constitute an offer by the Supplier to perform the Services therein and are not capable of acceptance, nor shall they form part of the Agreement. The Supplier may amend or revoke any quotation or proposal issued by it at any time in its discretion.
- 2.6 These terms and conditions apply to the Agreement (including each Order) to the exclusion of any other terms and conditions, including any previously issued terms, terms that may be implied by course of dealing, and/or any terms contained or referenced within any Customer purchase order.
- 2.7 Once in force, an Order may not be cancelled or varied, except in accordance with these terms and conditions.

3. Scope and performance of Services

- 3.1 The Supplier agrees to perform and the Customer agrees to receive the Services set out in the Order.
- 3.2 The Supplier shall perform the Services:
 - 3.2.1 in accordance with the Agreement, including any description or specification set out in the Order;
 - 3.2.2 in accordance with the Service Levels;
 - 3.2.3 in accordance with all applicable laws and regulations;
 - 3.2.4 using all due skill and care and in accordance with good industry standards and practices; and
 - 3.2.5 using appropriately skilled and qualified personnel.
- 3.3 The Supplier shall exercise commercially reasonable and diligent efforts to meet any performance dates specified in the Order but such dates shall be estimates only and time shall not be of the essence for performance of the Services. In particular:
 - 3.3.1 the Customer acknowledges that certain Services shall be subject to lead times and capacity, which may change from time to time, and the Supplier cannot guarantee the date(s) for performance of Services requested at short notice;
 - 3.3.2 the Supplier shall use reasonable endeavours to ensure that all parts required for the completion of Services will be in stock when the Services are due to be performed but cannot be held responsible if parts are unavailable. If this occurs, the Supplier shall notify the Customer and the Parties (acting reasonably) may agree the use of alternative parts, or the postponement of the Services until the required parts become available; and
 - 3.3.3 where the Supplier utilises specialist third-party providers to perform elements of the Services, it is not able to guarantee the timeliness of performance of those providers, though it shall use reasonable endeavours to procure that the providers perform in accordance with dates specified in the Order and shall keep the Customer informed in the event of any delay.

- 3.4 If the Supplier discovers during the course of the Services that additional parts and/or labour is required that is outside of the scope of the Services, it shall inform the Customer and provide a quote for the relevant costs, and only order such additional parts or carry out additional work with the Customer's prior approval.
- 3.5 On completion of the Services in respect of particular Instrument(s), the Supplier shall either (i) make the Instrument(s) and associated Deliverables available to the Customer for collection; or (ii) arrange delivery of the Instrument(s) and associated Deliverables to the Customer's designated returns location, as specified in the Order or otherwise agreed in writing by the Parties.
- 3.6 The Supplier reserves the right to make reasonable changes to the Services necessary to comply with any changes in applicable laws, regulations, health and safety requirements and/or UKAS standards, without needing to follow the change control process in clause 8.

4. Minimum commitments

- 4.1 Where Service Intervals apply, the Customer agrees to deliver the applicable Instruments to the Supplier at each of the Service Intervals or provide access to its premises for the performance of the Services (as applicable in accordance with the Order and/or Scope of Work), and the Supplier agrees to perform the Services at those Service Intervals for the duration of the Agreement. If the Customer fails to deliver or provide access to any Instruments for performance of the Services at an applicable Service Interval in accordance with the Agreement, the Supplier shall remain entitled to issue an invoice for the Charges payable in respect of those Instruments, which shall be payable in accordance with the Agreement.
- 4.2 Where a Service Term applies, the Parties agree that:
 - 4.2.1 the Services shall be provided on a recurrent basis for that Service Term. At the end of the initial period specified in the Order, the Service Term shall automatically renew for successive periods of one (1) year, unless and until terminated by either Party on giving no less than ninety (90) days written notice to the other Party, such notice to expire at the end of the Initial Service Term or any time thereafter;
 - 4.2.2 the Charges are payable based on the agreed scope of the Services and the scope of Services may not be reduced or cancelled without an agreed Change Order in accordance with clause 8;
 - 4.2.3 if the Customer fails to deliver any Instruments for the performance of the Services, the Supplier shall remain entitled to issue an invoice for the Charges payable in respect of those Instruments, which shall be payable in accordance with the Agreement; and
 - 4.2.4 if the Customer purports to terminate the Agreement (other than in accordance with clause 14 or otherwise cancels, reduces or opts not to use any the Services without an agreed Change Order, the Charges shall remain payable for the balance of the Services that would have been performed for the remainder of the Service Term and no refund shall be due in respect of Charges already invoiced.
- 4.3 Where an Order specifies a committed or minimum spend during the Service Term or another specified time period (for example, per annum), the Customer agrees that the same shall be binding. If, during the course of that period, the Customer has not procured sufficient Services to meet the committed or minimum spend, the Supplier may issue an invoice for the balance of the Charges due based on that amount, which shall be payable in accordance with these terms.
- 4.4 Where the Customer provides a forecast of its requirement for the Services, it agrees to promptly notify the Supplier if its requirements change.

5. Customer obligations

- 5.1 The Customer shall:
 - 5.1.1 make the Instruments and Customer Materials available to the Supplier at the time(s) or Service Intervals specified in the Order or otherwise agreed in writing by the Parties;
 - 5.1.2 ensure that the Instruments are delivered to the Supplier's nominated facility appropriately packaged and labelled and with all associated documentation necessary for verification of the Instruments and performance of the Services;
 - 5.1.3 provide the Supplier with reasonable assistance and co-operation in connection with the performance of the Services, including by providing all instructions, approvals and Customer Materials reasonably required by the Supplier;
 - 5.1.4 ensure that all instructions, approvals and Customer Materials provided to the Supplier are complete, up-to-date and accurate;
 - 5.1.5 where Services are to be performed at the Customer's premises, ensure all necessary preparatory steps are taken for the performance of the Services, and that all necessary access and assistance is given to the Supplier to enable it to perform the Services;
 - 5.1.6 not deliver to the Supplier any Instruments that are damaged or defective, unless the Parties have agreed that the Supplier shall perform the Services in relation to such Instruments, in which case the Customer shall label the Instruments accordingly and provide reasonable details to the Supplier of the nature of the damage or defect.
- 5.2 The Customer is solely responsible for determining:
 - 5.2.1 the interval(s) at which the Instruments are tested and/or calibrated. Whilst the Supplier may specify a due date, this is based solely on the Customer's instructions and does not constitute any statement or representation by the Supplier regarding the adequacy or appropriateness of that due date; and
 - 5.2.2 the procedures and standards to be followed in relation to each particular Instrument.
- 5.3 If any Instruments are received by the Supplier in unfit condition for performance of the Services, or without all necessary documentation and/or proper instructions, the following terms shall apply:
 - 5.3.1 the Supplier shall place the Services on hold in relation to those Instruments and shall notify the Customer of the steps required in order for the Services to proceed, and the Customer agrees to take such steps promptly;
 - 5.3.2 if, following a period of not less than thirty (30) days, the Customer has not taken the required steps, the Supplier may (at its option and without liability to the Customer) either: (i) continue to hold the Instruments pending instructions from the Customer, in which case the Supplier may charge and the Customer shall pay reasonable costs for storage; or

(ii) return the affected Instruments to the Customer at the Customer's expense;

5.3.3 the Services shall be rescheduled based on the Supplier's then current availability once the Customer has taken the steps required for the Services to proceed or shall be returned to the Customer at the Customer's expense on receipt of a written request; and

5.3.4 the Supplier shall not be liable for any loss or damage caused by the Instrument being unavailable whilst it is held pursuant to this clause 5.3 or due to the rescheduling of the Services.

5.4 If the Supplier is unable to complete on-site Services due a failure by the Customer, an abortive fee may be charged equal to the Charges payable for those Services, and a subsequent date must be agreed for performance of the Services, at the normal cost under the Agreement.

5.5 If, during the course of providing on-site Services, the Supplier is required or requested to perform additional work that was not within the scope of the Services, it may agree to do so provided that the same shall be treated as a Change and the Supplier may retrospectively quote and invoice for the additional time and/or resource spent in performing such additional work.

5.6 The Supplier shall not be liable for any delay in performance or non-performance of the Services to the extent caused by any act or omission of the Customer.

6. Invoicing and payment

6.1 The Supplier shall be entitled to invoice for the Charges at the time(s) and interval(s) specified in the Order, or otherwise in advance of the performance of the Services, except where credit terms apply as per clause 6.3. Unless otherwise specified in the Order, the Customer shall pay each invoice in full and cleared funds, without deduction or set-off, within thirty (30) days of the invoice date.

6.2 The Supplier reserves the right, if the Customer is a new customer or has a poor credit rating or payment history, to require payment of a fixed deposit or some or all of the Charges in advance of performance of the Services. If this is the case, it will be specified in the Order and the Supplier shall not be required to perform any Services unless and until payment of the relevant amount is received in full and cleared funds.

6.3 The Supplier may (at its sole discretion) provide credit terms enabling the Customer to receive multiple ongoing Services with invoicing and payment in arrears. Where the Supplier does so, it reserves the right to review the credit limit against the Customer's credit rating and payment history from time to time and increase, reduce or revoke the credit limit on written notice. If the credit limit is reached, the Supplier may either (i) issue an invoice in respect of Services performed but not yet invoiced; (ii) invoice and require advance payment of the Charges in respect of any further Services to be performed; and/or (iii) suspend performance of any further Services until the Customer settles its Charges liability sufficiently to bring its total credit balance below the specified credit limit.

6.4 The Charges are stated exclusive of VAT which, if applicable, shall be invoiced and payable in addition to and together with the Charges.

6.5 The Supplier reserves the right to review the Charges from time to time and shall notify the Customer at least seven (7) days in advance of any increase in the Charges taking effect. An increase in the Charges shall not apply to any Services already performed as at the date of the increase.

6.6 In the event that any amounts remain unpaid following the due date for payment, the Supplier may (without prejudice to any other rights and remedies it may have):

6.6.1 exercise a general lien on any Instruments then in its possession and retain those Instruments unless and until payment is received;

6.6.2 charge interest on the overdue sum at the rate of 8% per annum above the Bank of England base rate, calculated daily and due and payable together with the overdue sum (whether before or after judgment); and/or

6.6.3 suspend performance of the Services without liability to the Customer unless and until payment is received.

6.7 Without prejudice to any other rights and remedies the Supplier may have, it shall have the right to sell any Instrument subject of a lien under clause 6.6.1 if any sum due remains unpaid following a period of thirty (30) days from written notice to the Customer requiring it to make payment.

6.8 The remedies in clause 6.6 shall not apply to any invoice that is subject of a genuine dispute. If the Customer reasonably disputes any invoice under this Agreement, it shall notify the Supplier promptly and, in any event, within seven (7) days of receipt of the invoice.

7. Instrument care and management

7.1 In connection with any Instruments subject to third-party warranties and manufacturer requirements, it is agreed that:

7.1.1 the Customer shall inform the Supplier in advance if an Instrument is covered by a third-party warranty at the time the Services are performed, and shall provide all information relevant to the warranty, including any conditions as to the testing, calibration, maintenance or repair of the Instrument and any conduct that may void the warranty;

7.1.2 the Supplier may (but shall not be obliged to) agree to perform the Services in conformance with any warranty conditions, including in a way that adheres to the manufacturer's specifications and documentation and using original or manufacturer-authorized parts, provided that any additional cost for doing so shall be payable by the Customer. If the Customer instructs the Supplier not to adhere to those requirements, the Customer is fully responsible for the consequences of the failure to do so; and

7.1.3 the Supplier shall not be liable for any failure to comply with any third-party warranties or manufacturer requirements or specifications where the Customer has not informed the Supplier of the same.

7.2 If Services relate to an Instrument that is the subject of an insurance claim, the Customer (or the policyholder if not the same person or entity) is responsible for signing any documents required for the insurer to make payment for the Services. Notwithstanding that the Supplier may agree to receive payment from an insurer, the Customer remains primarily liable for the Charges and the Supplier reserves the right to require payment by the Customer in the event of any delay or non-payment by the insurer.

7.3 Whilst the Supplier shall take reasonable steps to keep Instruments and Customer Materials in good, safe condition, it shall not

be responsible for any loss or damage caused during transit or whilst in the Supplier's possession, unless directly attributable to the negligence or wilful misconduct of the Supplier or its personnel.

8. Change control process

8.1 If either Party wishes to make a Change at any time (**Change Requesting Party**), the Change Requesting Party may request such a Change (a **Change Request**) under the procedure set out in this clause:

8.1.1 each Change Request shall be submitted by the Change Requesting Party in writing and shall include such information necessary to enable the Parties to assess the impact of the proposed Change;

8.1.2 where the Customer issues a Change Request, the Supplier shall confirm in writing whether it is agreeable to the Change Request and, if so, shall detail the impact of the proposed Change on this Agreement, including any consequent amendment of the Scope of Work, Services, Charges and/or other terms of this Agreement (**Change Order**). Where the Supplier is issuing a Change Request, it shall do so via a draft Change Order; and

8.1.3 a Change Order shall only become binding on the Parties once signed by an authorised representative of both Parties and no Change shall be valid unless the provisions of this clause are complied with.

9. Sub-contracting

The Supplier may sub-contract the performance of its obligations under the Agreement, provided that it shall notify the Customer on request of any element of the Services outsourced to a third-party subcontractor. The Supplier remains fully responsible in accordance with these terms and conditions for the acts and omissions of its subcontractors.

10. Warranty and disclaimers

10.1 The Supplier warrants that the Deliverables shall, on delivery to the Customer, (i) conform with the requirements specified in the Agreement; and (ii) accurately reflect the results arising from performance of the Services.

10.2 If the Customer becomes aware or reasonably believes that the performance of any Services and/or any Deliverables supplied by the Supplier fail to conform with the Agreement, it shall notify the Supplier in writing promptly and, in any event, within twenty four (24) hours following performance or delivery of the same and the following terms shall apply:

10.2.1 the Customer shall provide reasonable assistance and cooperation to enable the Supplier to inspect the relevant Services or Deliverables, including by giving the Supplier the ability to inspect any affected Instruments and Deliverables;

10.2.2 if the Supplier agrees with the Customer's assessment, it shall promptly re-perform the non-conforming Services and/or rectify and redeliver the non-conforming Deliverables or, if it is not reasonably able to do so, it may opt to refund the Charges paid in respect of the affected Services or Deliverables, and the Supplier's compliance with this clause 10.2.2 shall be the Customer's sole and exclusive remedy in respect of the non-conformance; and

10.2.3 the non-conformance of any Services and Deliverables shall not entitle the Customer to cancel or reject any other Services or Deliverables.

10.3 If the Supplier repairs or replaces any part of an Instrument, a limited warranty against any material defects shall apply to the repaired or replaced parts only for a period of one (1) month from the date of the repair or replacement (**Warranty Period**). Warranties on certain parts may vary due to their original manufacturers' warranty conditions, in which case the Supplier will specify the applicable warranty period for those parts on its invoice or other documentation issued to the Customer. This warranty does not guarantee the proper operation or conformance of the Instrument as a whole and the Supplier does not warrant, undertake or represent that any repair or replacement of part(s) shall enable the Instrument to perform in accordance with its specification.

10.4 If any repaired or replacement part fails during the Warranty Period, the Customer agrees to promptly notify the Supplier in writing and the Supplier shall carry out any necessary further repair or replacement at no additional cost, although the Customer is responsible for the costs of returning the Instrument to the Supplier for inspection and repair.

10.5 The Customer acknowledges and agrees that:

10.5.1 any results data relating to calibration and/or testing Services represents the position at the time of performance of the Services only and the Supplier does not warrant or guarantee that such results shall remain accurate;

10.5.2 the Customer is solely responsible for ensuring that the Instruments comply with applicable laws, regulations, standards and certifications, are safe to operate, and fit for their intended purpose; and

10.5.3 save as provided in these terms and conditions, and to the extent legally permissible, the Services and Deliverables are provided "as is" and without any conditions, undertakings, warranties or representations of any kind, including any implied by law.

11. Insurance and limitations on liability

11.1 The Supplier shall at all times have in place suitable and valid policies of insurance, including public liability insurance and any insurance required by applicable laws.

11.2 The Supplier shall not be liable to the Customer under or in connection with the Agreement and its performance or non-performance, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:

11.2.1 loss of use of an Instrument;

11.2.2 interruption to business;

11.2.3 loss of income, revenue, business;

11.2.4 loss of business opportunity;

11.2.5 loss of profit or contracts;

11.2.6 loss or corruption of software, data or information;

11.2.7 loss of anticipated savings; or

11.2.8 any indirect, special or consequential loss, damage, costs, expenses or other claims.

11.3 Without prejudice to the exclusion of liability set out in clause 11.2, the Supplier's total liability to the Customer in respect of any

one claim or series of connected claims, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the higher of (i) the Charges paid by the Customer in the six (6) months preceding the claim or first in the series of connected claims; or (ii) £50,000 (fifty thousand pounds).

- 11.4 Nothing in these terms and conditions, including clauses 11.2 and 11.3, shall exclude or limit either Party's liability for (i) death or personal injury caused by its negligence; (ii) fraud or fraudulent misrepresentation; or (iii) any other liability that cannot lawfully be limited or excluded.

12. Intellectual property rights

- 12.1 Any and all Intellectual Property Rights in or arising out of or in connection with the provision of the Services (including without limitation any Intellectual Property Rights in any processes, software and programs used by the Supplier in the provision of the Services) shall, as between the Parties, be owned by the Supplier and remain the exclusive property of the Supplier.
- 12.2 Any and all Intellectual Property Rights in and to the Customer Materials shall, as between the Parties, be owned by the Customer and remain the exclusive property of the Customer. The Customer hereby grants the Supplier a non-exclusive, worldwide, royalty-free, irrevocable licence to use the Customer Materials for the purpose of performing the Services.

13. Confidentiality and data protection

- 13.1 Each Party shall keep confidential all Confidential Information of the other and shall only use the same as required to perform the Agreement. The provisions of this clause shall not apply to:
- 13.1.1 any information which was in the public domain at the date of the Agreement or subsequently comes into the public domain other than as a consequence of any breach of the Agreement or any other duty of confidentiality;
 - 13.1.2 any information which is independently developed by the receiving Party without using information supplied by the disclosing Party; or
 - 13.1.3 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Agreement.
- 13.2 The Supplier may disclose the Customer's Confidential Information to its employees, contractors (including subcontractors), agents and suppliers to the extent necessary for the proper performance of the Agreement.
- 13.3 The obligations in relation to Confidential Information shall remain in force for a period of five (5) years from the termination or expiry of the Agreement.
- 13.4 The Supplier may disclose and publicise the Customer's name for marketing and promotional purposes.
- 13.5 All personal data that the Supplier may use in connection with the Customer and the performance of this Agreement will be collected, processed, and held in accordance with the Data Protection Laws. It is not anticipated that the Supplier shall process any personal data on behalf of the Customer in the course of performing the Services, and the Customer agrees to remove, anonymise or otherwise obfuscate any personal data contained within the Customer Materials. If the Parties agree that the Supplier shall act as a processor on behalf of the Customer, they shall enter into a data processing agreement prior to the Supplier receiving any personal data.

14. Termination

- 14.1 Either Party may terminate the Agreement (in whole or in part) at any time with immediate effect by giving notice in writing to the other Party if:
- 14.1.1 the other Party commits a material breach of the Agreement, and such breach is not remediable;
 - 14.1.2 the other Party commits a remediable material breach of the Agreement, which is not remedied within fourteen (14) days of receiving written notice of such breach;
 - 14.1.3 the other Party is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, makes any voluntary arrangement with its creditors or becomes subject to an administration order or serves notice of administration, or has a receiver, manager or administrative receiver appointed over its assets or (being an individual) shall become bankrupt or (being a company) shall have a winding-up order made against it or shall go into liquidation (except for the purposes of a solvent amalgamation or reconstruction and in such manner that the resulting company effectively agrees to be bound by or assume the obligations imposed on the predecessor company under this Agreement); or
 - 14.1.4 the other Party stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so.
- 14.2 The Supplier may terminate the Agreement (in whole or in part) at any time with immediate effect by giving notice in writing to the Customer if the Customer fails to pay any Charges by the due date for payment and remains in default fourteen (14) days after receiving written notice requiring it to make payment.
- 14.3 Termination or expiry of the Agreement shall not affect any accrued rights and liabilities of the Parties at any time up to the date of termination.
- 14.4 In the event of early termination of the Agreement:
- 14.4.1 the Customer shall immediately pay any Charges invoiced and in respect of Charges accrued but not invoiced, the Supplier shall be entitled to issue an invoice, which shall be payable immediately on receipt;
 - 14.4.2 unless terminated early by the Customer pursuant to clause 14.1, the Customer shall be liable for any Charges payable in respect of incomplete Service Intervals and/or for the remainder of the Service Term, in accordance with clause 4;
 - 14.4.3 subject to the foregoing, where the Customer has paid any deposit or prepayment, the Supplier shall return it less any amount owed to it by the Customer, but the Customer will still be liable to pay the Supplier the remainder of any amount owed;
 - 14.4.4 if the Agreement is terminated whilst Instruments are held by the Supplier for performance of the Services and such Services are not completed, the Customer shall pay for all labour and for all parts used and, at the Supplier's discretion for all parts ordered but not yet used if the Supplier is unlikely to use or sell those ordered parts within three (3) months; and

14.4.5 subject to payment of all outstanding Charges, the Supplier shall deliver up or make available for collection of any Instruments in its possession or control, together with any completed Deliverables.

15. Complaints and dispute resolution

- 15.1 If the Customer has any query or complaint regarding the performance of the Services, it may contact the Supplier and the Supplier shall endeavour to resolve the same in accordance with its complaints procedure.
- 15.2 In the event of any dispute concerning the performance of the Agreement, either Party may initiate a dispute resolution process by serving notice in writing on the other Party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute. The Parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
- 15.2.1 within seven (7) days of service of the notice, an authorised representative of each of the Parties shall meet to discuss the dispute and attempt to resolve it;
- 15.2.2 if the dispute has not been resolved within seven (7) days of the first meeting of the authorised representatives, then the matter shall be referred to a senior manager or director of each of the Parties, who shall meet to discuss the dispute and attempt to resolve it; and
- 15.2.3 If the dispute remains unresolved fourteen (14) days following escalation under clause 15.2.2, either Party may refer the dispute for mediation in accordance with the London Court of International Arbitration Mediation Rules.
- 15.3 Either Party may issue formal legal proceedings at any time whether or not the steps referred to in this clause 15 have been completed.

16. Notices

- 16.1 Any notice given by a Party under these terms and conditions shall:
- 16.1.1 be in writing and in English;
- 16.1.2 be signed by, or on behalf of, the Party giving it (except for notices sent by email); and
- 16.1.3 be sent to the relevant Party at the address set out in the Agreement.
- 16.2 Notices may be given, and are deemed received:
- 16.2.1 by hand: on receipt of a signature at the time of delivery;
- 16.2.2 by standard (first-class or equivalent) post: at 9.00 am on the second Business Day after posting;
- 16.2.3 by international (tracked, signed-for or equivalent) post: at 9.00 am on the fifth Business Day after posting; and
- 16.2.4 by email: on the next Business Day following transmission, provided the email is sent to the correct address and no delivery failure notification is received.

16.3 This clause does not apply to notices given in legal proceedings or arbitration.

17. Miscellaneous

- 17.1 **Variation.** The Supplier reserves the right to update these terms and conditions from time to time. Any changes will only apply to new Orders that contain or reference the updated terms and conditions, unless the Supplier notifies the Customer of the changes in advance, in which case they shall also apply to existing Orders.
- 17.2 **Force Majeure.** Neither Party shall be liable to the other for any delay in performance or non-performance of its obligations under the Agreement (other than an obligation to pay amounts due) to the extent caused by Force Majeure. If a Party is affected by Force Majeure, it agrees to promptly notify the other Party and to exercise reasonable efforts to minimize the impact and duration of the Force Majeure.
- 17.3 **No waiver.** No failure or delay by either Party in exercising any rights under these terms and conditions constitutes a waiver of that right, and no waiver of a breach of any provision of these terms and conditions means that a Party will waive any subsequent breach of the same or any other provision.
- 17.4 **No assignment.** The Customer may not assign, transfer, subcontract or otherwise dispose of or encumber any of its rights or obligations under the Agreement, in whole or in part, without the Supplier's prior written consent.
- 17.5 **No partnership or agency.** The Parties are independent persons and are not partners, principal and agent or employer and employee and the Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. Neither Party shall have, nor shall represent that it has, any authority to make any commitments on the other Party's behalf.
- 17.6 **Severance.** If any provision of these terms and conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these terms and conditions and the remainder of the provision in question shall not be affected.
- 17.7 **Third Party Rights.** No part of the Agreement is intended to confer rights on any third parties.
- 17.8 **Entire Agreement.** The documents comprising the Agreement contain the entire agreement between the Parties with respect to its subject matter. Each Party acknowledges that, in entering into the Agreement, it has not relied on any representation, warranty or other provision except as expressly provided in the documents comprising the Agreement, provided that nothing in this clause shall exclude any liability for fraudulent misrepresentation.
- 17.9 **Export.** The Customer warrants and represents that it is not subject to any sanctions, export restrictions or other economic restrictions, and that its use of the Services and Instruments shall comply with any applicable national and international export control laws.
- 17.10 **Conflicts within Agreement.** If there is any conflict between these terms and conditions and the terms of the Order and/or Scope of Work, these terms and conditions shall take precedence except where expressly stated otherwise in these terms and conditions.
- 17.11 **Law and Jurisdiction.** The Agreement and any dispute or claim arising out of, or in connection with it, its subject matter, or formation (including non-contractual disputes or claims) shall be governed by English Law and the Parties irrevocably agree

that the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.