

## TERMS & CONDITIONS OF BUSINESS FOR PEARL SCAN

Please ensure that you read and understand these Conditions before you accept any quotation. You will be bound by these Conditions once a contract comes into existence between us.

### 1. Interpretation

1.1 In these Conditions, the following definitions apply

"Blank Page"	a page free from all marks and devoid of any content;
"Business Day"	a day (other than Saturday, Sunday or a public holiday) when banks in London are open for business);
"Conditions"	the terms and conditions set out in this document as amended from time to time in accordance with condition 17.2;
"Contract"	the contract between the Supplier and the Customer for the provision of the Services formed in accordance with condition 2.3;
"Customer"	the person, firm or company who purchases Services from the Supplier;
"Customer's Equipment"	any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services;
"Data Protection Legislation"	all applicable privacy and data protection laws including the UK GDPR, the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426);
"Deliverables"	all documents, products and materials produced or developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts);
"Delivery Location"	has the meaning given in condition 3.1;
"Document"	includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;
"Hosted Application"	the software programs or components thereof used by the Supplier to operate the On-line Hosting as such subsist during the provision of the Services;
"Input Material"	all documents, information, data and materials provided by the Customer relating to the Services including (without limitation), deeds, agreements, computer programs, data, reports and specifications;
"Intellectual Property Rights"	all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or 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 know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all 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;
"On-line Hosting"	the web-based applications and services that may be made available by the Supplier in its provision of the Services as such services may be amended or supplemented from time to time;
"Order"	the Customer's order for the Services: (a) as set out in the Customer's purchase order; or (b) as set out in the Customer's written acceptance of the Supplier's quotation; or (c) (in the absence of any purchase order or written quotation) in accordance with the request for Services made by the Customer, as the case may be;
"Personal Data"	any information relating to an identified or identifiable natural person that is provided or made available by the Customer to the Supplier and processed (as defined in the Data Protection Legislation) by the Supplier as a result of, or in connection with, the provision of the Services;
"Pre-existing Materials"	all documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of the Contract including computer programs, data, reports and specifications;
"Services"	the services to be provided by the Supplier under the Contract as set out in the Order accepted by the Supplier pursuant to condition 2.3, together with any other services which the Supplier provides, or agrees in writing to provide, to the Customer;
"Service Interruption"	a period during which there is a total or partial cessation of the Hosted Application or the ability to provide the On-line Hosting;
"Storage Location"	the location notified to the Customer on request (as being the location where the Input Materials are held from time to time);
"Supplier"	Pearl Scan Solutions Limited (company number 4637136) whose registered office is at First Floor, 48 Lord Street, Manchester M3 1HN;
"Supplier's Equipment"	any equipment or asset, including tools, systems, cabling or facilities, provided or made available by the Supplier or its agents, subcontractors, consultants and employees and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer; and
"UK GDPR"	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
"VAT"	value added tax chargeable under English law for the time being and any similar additional tax.

1.2 In these Conditions, the following rules apply:

- 1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 a reference to a party includes its personal representatives, successors and permitted assigns;
- 1.2.3 a reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.2.4 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.2.5 headings in these Conditions shall not affect their interpretation; a reference to writing or written includes faxes and e-mails; and
- 1.2.6

1.2.7 any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

### 2. Basis of Contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Services in accordance with these Conditions. The Customer shall ensure that the terms of the Order are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when :  
2.3.1 the Supplier issues a written acceptance of the Order; or  
2.3.2 (if earlier) when the Supplier starts to provide the Services.
- 2.4 A quotation for the Services given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue, provided that the Supplier has not previously withdrawn it.
- 2.5 Any samples, drawings, descriptions or advertising the Supplier issues, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published solely to provide the Customer with an approximate idea of the services they describe. They do not form part of the Contract for the provision of the Services or have any contractual force.

### 3. Collection and delivery

- 3.1 If the Supplier has agreed to collect the Input Material from the Customer for the purpose of providing the Services, the Supplier shall collect the Input Material from the location set out in the Contract or such other location as the parties may agree (the "Delivery Location")
- 3.2 Unless otherwise agreed, the Supplier shall:  
3.2.1 deliver the Deliverables to the Customer at the Delivery Location; and  
3.2.2 make the Input Material available for collection by the Customer from the Storage Location or other location as appropriate at a time to be agreed between the Supplier and the Customer;
- 3.3 Delivery of the Deliverables shall be completed on the arrival at the Delivery Location of the Deliverables or, if agreed, making available of the Deliverables on the Hosted Application
- 3.4 Any delivery date agreed between the parties is approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay or failure to collect the Input Material or any delay of failure to deliver the Deliverables that is caused by events or circumstances beyond its reasonable control or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Services
- 3.5 If the Customer fails to collect the Input Material or take delivery of the Deliverables, then, except where such failure or delay is caused by the Supplier's failure to comply with its obligations under the Contract:  
3.5.1 collection of the Input Material shall be deemed to have been completed at 9.00 am on the date 20 Business Days following completion of the Services;  
3.5.2 the Deliverables shall be deemed to have been delivered at 9.00 am on the day following the date of the attempted delivery pursuant to condition 3.3; and  
3.5.3 the Supplier may (notwithstanding its rights under condition 3.6) store the Input Material or the Deliverables until delivery or collection takes place, and charge the Customer for all related costs and expenses (including return, re-delivery, storage and insurance (if applicable)).
- 3.6 Following deemed collection of the Input Material (pursuant to condition 3.5.1) or deemed delivery of the Deliverables (pursuant to condition 3.5.2), the Supplier may dispose (by shredding or otherwise) of part or all of the Input Material or the Deliverables (as appropriate) and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Contract (to the extent the price has already been received by the Supplier) and/or charge the Customer for any shortfall below the price of the Contract
- 3.7 Notwithstanding the Supplier's rights pursuant to condition 17.12, the Customer further acknowledges that the Supplier is likely to use a commercial courier (or similar) to collect (and return, if return is requested by the Customer) the Input Material and deliver the Deliverables and that the Supplier shall be entitled to use such courier's standard service. In the event that the Customer does not consider this service to be sufficient, it must give the Supplier written notice of this at least 3 Business Days prior to the relevant collection, return or delivery to enable the Supplier to make alternative arrangements. The Supplier shall then be entitled to increase the price of the Services in accordance with condition 7.3 to reflect such increased costs.

### 4. Title and risk

- 4.1 The risk in the Deliverables shall pass to the Customer on completion of delivery in accordance with condition 3. Unless agreed otherwise in writing, risk in the Input Material shall remain with the Customer at all times.
- 4.2 Title to the Deliverables shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:  
4.2.1 the Services; and  
4.2.2 all other sums which are or which become due to the Supplier for or in connection with the Services in accordance with the Contract or any other services or goods supplied to the Customer.
- 4.3 Until title to the Deliverables has passed to the Customer, the Customer shall:  
4.3.1 hold the Deliverables on a fiduciary basis as the Supplier's bailee;  
4.3.2 store the Deliverables separately from all other items held by the Customer so that they remain readily identifiable as the Supplier's property;  
4.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Deliverables;  
4.3.4 not copy or reproduce the Deliverables;  
4.3.5 maintain the Deliverables in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

- 4.3.6 notify the Supplier immediately if it becomes subject to any of the events listed in condition 15.1; and
- 4.3.7 give the Supplier such information relating to the Deliverables as the Supplier may require from time to time, but the Customer may use the Deliverables in the ordinary course of its business.
- 4.4 If before title to the Deliverables passes to the Customer the Customer becomes subject to any of the events listed in condition 15.1, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Deliverables have not been delivered to an end user, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Deliverables and, if the Customer fails to do so promptly, the Customer hereby grants to the Supplier (or its authorised representatives) to enter any premises of the Customer or of any third party where the Deliverables are stored in order to recover them. The Supplier may also suspend the Customer's access to the Hosted Application without notice
- 5 **Supplier's obligations**
- 5.1 The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Customer in accordance with the terms of the Contract.
- 5.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 5.3 The Supplier shall use reasonable endeavours to observe all health and safety rules and regulations, and any other reasonable security requirements that apply at any of the Customer's premises and that have been communicated to it under condition 6.1.6, provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.
- 5.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill
- 6 **Customer's obligations**
- 6.1 The Customer shall:
- 6.1.1 co-operate with the Supplier in all matters relating to the Services;
- 6.1.2 provide the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Customer's premises, office accommodation, data and other facilities as reasonably required by the Supplier from time to time;
- 6.1.3 ensure that its insurance policies provide adequate cover in relation to the Input Material being held by the Supplier (or its agents, subcontractors, consultants or employees);
- 6.1.4 provide to the Supplier, in a timely manner, such Input Material and other information as the Supplier may reasonably require and ensure that it is accurate in all material respects (including if appropriate, an accurate inventory of all Input Material);
- 6.1.5 be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from any of its premises (or any premises where the supply of the Services shall be carried out) in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing the Supplier in writing of all of the Customer's obligations and actions under this condition 6.1.5;
- 6.1.6 inform the Supplier in writing of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;
- 6.1.7 ensure that all Customer's Equipment is always in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant applicable standards or requirements;
- 6.1.8 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Supplier's Equipment, the use of Input Material and the use of the Customer's Equipment in relation to the Supplier's Equipment insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment, in all cases before the date on which the Services are to start; and
- 6.1.9 keep, maintain and insure the Supplier's Equipment in good condition or in accordance with the Supplier's instructions as notified in writing from time to time, and shall not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation
- 6.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 6.3 The Customer shall be liable to pay to the Supplier, on demand on an indemnity basis, all reasonable costs, charges or losses sustained or incurred by the Supplier (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss of or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence or breach of this condition 6, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.
- 6.4 The Customer shall not, without the prior written consent of the Supplier, at any time from the Commencement Date to the expiry of 12 months after the last date of supply of the Services, solicit or entice away, or seek to solicit or entice away from the Supplier or employ (or attempt to employ) any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services during the period in which the Services were provided.
- 7 **Price and payment**
- 7.1 In consideration of the provision of the Services by the Supplier, the Customer shall, subject to condition 7.2, pay the price set out in the Order.
- 7.2 The Customer acknowledges that where the price set out in the Order is based on the information supplied by the Customer, in the event that this information proves to be incorrect or inaccurate during the provision of the Services (including, but not limited to, details of the volume or quantities of Input Material), the Supplier shall vary the price set out in the Order based on the actual Services provided and at the Supplier's rates prevailing at that time and such varied price shall be the price payable pursuant to condition 7.1.
- 7.3 The Supplier may, by giving notice to the Customer, increase the price of the Services to reflect any increase in the cost of the Services that is due to:
- 7.3.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 7.3.2 any request by the Customer to change the Delivery Date, quantities or scope of Services ordered;
- 7.3.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions or comply with its obligations pursuant to condition 6.1; or
- 7.3.4 any request by the Customer to change the collection and/or return of the Input Material and/or the delivery of the Deliverables pursuant to condition 3.7; or
- 7.3.5 any request by the Customer to change the storage of the Input Material pursuant to condition 12.
- 7.4 The price of the Services is exclusive of amounts in respect of VAT. The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services.
- 7.5 The Supplier may invoice the Customer for the Services on or at any time after the Commencement Date and the Customer shall pay such invoices in full and in cleared funds prior to the Supplier starting to provide the Services. The Supplier shall have no liability in respect of any delays caused (directly or indirectly) by the Customer's failure to make payment in accordance with this condition.
- 7.6 Notwithstanding condition 7.5, the Supplier may allow certain Customers to be classed as "Account Customers" from time to time at its entire discretion. The Supplier shall invoice such Account Customers for the Services in relation to each Contract on or at any time after commencement of the Services and such Account Customers shall pay the invoice in full and cleared funds within 20 Business Days of the date of invoice. The Supplier may, in its absolute discretion, determine that a customer shall no longer be classed as an "Account Customer" and, in such an event, the provisions of condition 7.5 shall apply immediately from the date of notification to the relevant customer of such determination
- 7.7 The Supplier shall (at its entire discretion) be entitled to invoice Customers in instalments, which shall be treated as separate accounts and payable accordingly.
- 7.8 Payment shall be made to the bank account nominated in writing by the Supplier from time to time. Time of payment is of the essence.
- 7.9 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:
- 7.9.1 charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of The Royal Bank of Scotland plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand PROVIDED ALWAYS that the Supplier shall retain the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 at its entire discretion; and
- 7.9.2 suspend all Services (and the provision of any other goods or services which the Supplier provides to the Customer from time to time, including any Online Hosting) until payment has been made in full.
- 7.10 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 7.11 All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision. This condition 7.11 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 7.12 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer
- 8 **On-line Hosting services**
- 8.1 The Customer acknowledges that some Services may allow the Customer to access and use On-line Hosting in accordance with the terms of the Contract. Title and/or any rights in and to the Hosted Applications shall at no time pass to the Customer.
- 8.2 The Supplier may provide the Customer with user identification codes, passwords or usernames or other information as part of the Supplier's security procedures (the "Security Codes") in relation to the On-line Hosting. The Customer must treat the Security Codes as confidential and must not disclose them to any third party. The Supplier shall have the right to disable any Security Codes, whether chosen by the Customer or allocated by the Supplier, at any time, if in the Supplier's opinion, the Customer has failed to comply with this condition 8.
- 8.3 The Customer must not:
- 8.3.1 misuse the Hosted Application by knowingly introducing viruses, trojans, worms, logic bombs, keystroke loggers, spyware, adware or other material which is malicious or technologically harmful or similar computer code designed to adversely affect the operation of the Hosted Applications;
- 8.3.2 attempt to gain unauthorised access to the Hosted Application, the server on which the Hosted Application may be stored or any server, computer or database connected to the Hosted Application; or
- 8.3.3 attack the Hosted Application (including via a denial-of-service attack or a distributed denial-of-service attack).
- 8.4 Any breach of condition 8.3, may be a criminal offence under the Computer Misuse Act 1990 and the Supplier shall be entitled to report any such breach to the relevant law enforcement authorities and the Supplier will co-operate with those authorities by disclosing the Customer's identity to them. In the event of any breach of this condition 8, the Customer's right to use the Hosted Application will cease immediately.
- 8.5 The Customer must use the Hosted Application only for the purpose of and in connection with the Services and for lawful purposes and may not:
- 8.5.1 use it in any way that breaches any applicable local, national or international regulation;
- 8.5.2 use it in any way that is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect; use it for the purpose of harming or attempting to harm minors in any way;
- 8.5.3 use it to transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (spam);
- 8.5.4 reproduce, duplicate or copy or otherwise disclose or disseminate the Hosted Application;
- 8.5.5 lease, resell, assign loan, sublicense or transfer possession of the Hosted Application or electronically transmit any of the Hosted Application over a network unless, and only to the extent, that the Customer has received written authority from the Supplier; or
- 8.5.6 interfere with other Supplier's customer's use of the On-line Hosting.
- 8.6 The Customer shall be liable to pay the Supplier, on demand on an indemnity basis, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence or breach of this condition 8, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.
- 8.7 The Customer is responsible for ensuring that only those employees, agents and subcontractors who need to access the On-line Hosting for the purpose of the Services are provided access to the On-line Hosting and that such employees, agents and subcontractors are aware of this condition 8, and that they comply with it. The Customer shall be wholly responsible for any losses suffered or incurred by the Supplier arising out of or in connection with any breach of this condition 8.7.
- 8.8 The Supplier shall not be liable in respect of changes made to the provision of the On-line Hosting (including the Hosted Application) (or any part of them) where the On-line Hosting are proprietary to a third party but the Supplier shall notify the Customer of such changes as it becomes aware of them.
- 8.9 Service Interruptions may be made by the Supplier when in its reasonable opinion they are necessary to improve or maintain the provision of the On-line Hosting but the Supplier will endeavour to give at least 5 Business Days' prior written notice to the Customer of any Service Interruptions and will use reasonable endeavours to schedule such Service Interruptions so as to minimise any impact on the On-line Hosting.

- The Supplier does not warrant that the Customer's access to or use of the Hosted Application shall be uninterrupted or error free or that the Hosted Application will meet the Customer's requirements.
- 8.10 The Supplier shall provide initial notice to the Customer by telephone, e-mail or comparable notification service within 3 hours of the Supplier becoming aware of an event that has caused or may cause an unscheduled Service Interruption. In the event the Customer first becomes aware of such event, the Customer shall notify the Supplier by telephone, e-mail or comparable notification service as soon as is practicable
- 9 **Confidentiality and the Supplier's property**
- 9.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives and any other documents, information and materials which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain.
- 9.2 The Customer may disclose such information:
- 9.2.1 to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under the Contract; and
- 9.2.2 as may be required by law, court order or any governmental or regulatory authority.
- 9.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this condition 9.
- 9.4 The Customer shall not use any such information for any purpose other than to perform its obligations under the Contract.
- 9.5 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer (including the Hosted Application, the Pre-existing Materials and the Supplier's Equipment) shall, at all times, be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation
- 10 **Intellectual Property Rights**
- 10.1 As between the Customer and the Supplier, all Intellectual Property Rights and all other rights in the Hosted Application, the provision of the On-line Hosting, the Deliverables, the Services and the Pre-existing Materials (as such may subsist from time to time) shall be owned and continue to be owned by the Supplier or any third agent, sub-contractor, consultant or third party engaged by it. Subject to condition 10.3, the Supplier grants to the Customer a non-exclusive, royalty free, non-transferable, revocable licence (without the right to grant sub- licences) to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables for the provision of the Services in accordance with the Contract and, to the extent the Hosted Application and On-line Hosting services are made available to the Customer, the Hosted Application and On-line Hosting services in accordance with the terms of the Contract. If the Contract terminates for whatever reason, this licence shall automatically terminate.
- 10.2 The Customer grants to the Supplier a fully paid-up, non-exclusive, royalty-free licence to copy and modify the Input Material for the term of the Contract for the purpose of providing the Services.
- 10.3 The Customer acknowledges that, where the Supplier does not own any Intellectual Property Rights in any part of the Hosted Application, the Pre-existing Materials or in connection with the provision of the Services, the Customer's rights in them (or any such part of them) are conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.
- 10.5 The Customer shall indemnify and hold harmless the Supplier and its employees from and against all demands, claims, proceedings, penalties, fines and liabilities (whether criminal, civil, in contract, tort or otherwise) arising out of or in connection with the infringement of any third party Intellectual Property Rights arising out of or in connection with the Services or the Input Material or any other information supplied to the Supplier by the Customer or any of its agents.
- 11 **Limitation of Liability**
- THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION**
- 11.1 This condition 11 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of:
- 11.1.1 any breach of the Contract including any deliberate breach of this Contract by the Supplier, or its employees, agents or subcontractors;
- 11.1.2 any use made by the Customer of the Deliverables and the Hosted Application or any part of them; the provision of the Services;
- 11.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 Nothing in these Conditions limits or excludes the liability of the Supplier:
- 11.3.1 for death or personal injury resulting from negligence; or
- 11.3.2 for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier; or
- 11.3.3 for any liability incurred by the Customer as a result of any breach by the Supplier of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982; or
- 11.3.4 for any other liability which it would be unlawful to limit or exclude.
- 11.4 Subject to condition 11.2 to condition 11.3 (inclusive):
- 11.4.1 the Supplier shall not be liable, whether in tort, contract, misrepresentation or otherwise for:
- (a) loss of profits; or
- (b) loss of business; or
- (c) depletion of goodwill and/or similar losses; or
- (d) loss of anticipated savings; or
- (e) loss of goods (including the Input Material and the Customer's attention is particularly drawn to condition 6.1.3); or
- (f) loss of contract; or
- (g) loss of use; or
- (h) loss of or corruption of data or information; or
- (i) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 11.4.2 the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the lower of:
- (a) the price paid or due to be paid for the Services in the 3 months prior to the date on which the incident giving rise to the claim arose; or
- (b) the sum which the Supplier is able to recover from its insurers in respect of such liability, in each case, in relation to the relevant Contract.
- 11.5 The Supplier shall use its reasonable endeavours to control the flow of data to and from its network and other portions of the internet but the Customer acknowledges that some flow depends in large part on the performance of the internet services provided or controlled by third parties, and the actions or omissions of such third parties may impair or disrupt connections to the internet (or portions thereof). Although the Supplier will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, the Supplier cannot guarantee that such events will not occur. Accordingly, the Supplier disclaims any and all liability resulting from or related to such events.
- 11.6 The Customer acknowledges that the quality of the scan will be dependant on the quality of the original document provided, for example, if the original document content is feint and unclear, the image quality of the scan will be feint and unclear. Whilst the Supplier will use its reasonable endeavours to ensure that the image quality in respect of any Document produced within the Deliverables is of the highest quality, the Supplier will accept no liability for reduced quality where that reduction in quality is due to the image quality of the Input Materials provided by the Customer.
- 11.7 Whilst the Supplier will make all reasonable efforts to ensure that no Blank Pages are included within the Deliverables, the Supplier accepts no liability for Blank Pages within the Deliverables, where these have occurred due to the Customer providing pages within the Input Materials which are not Blank Pages for example where such pages contain blemishes or marks
- 12 **Storage of Input Material**
- 12.1 The Customer acknowledges that, subject to the provisions of condition 14, the Supplier is likely to store the Input Material with third party storage suppliers and that the Supplier may not take out insurance to cover the loss (whether stolen, lost, damaged or otherwise) of such Input Material.
- 12.2 In the event that the Customer requires the Input Material to be insured, it must give the Supplier written notice of this at least 5 Business Days prior to the collection of such Input Material together with details of the level of insurance cover required to enable the Supplier to make such arrangements. The Supplier shall then be entitled to increase the price of the Services in accordance with condition 7.3.
- 12.3 The Customer's attention is particularly drawn to condition 6.1.3.
- 13 **Destruction of Input Material**
- 13.1 As set out in Condition 3.6, following deemed collection of the Input Material (pursuant to condition 3.5.1) or deemed delivery of the Deliverables (pursuant to condition 3.5.2), the Supplier may dispose (by shredding or otherwise) of part or all of the Input Material or the Deliverables (as appropriate) and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Contract (to the extent the price has already been received by the Supplier) and/or charge the Customer for any shortfall below the price of the Contract.
- 13.2 For the avoidance of doubt, the Customer acknowledges that it has the right to collect the Input Material up to 20 Business Days from completion of the Services and if it fails to do so, the Supplier shall have no liability in relation to the destruction of the Input Material.
- 13.3 The Supplier recommends to the Customer that following delivery of the Deliverables, the Customer either:
- 13.3.1 carries out such checks as it thinks fit on the Deliverables to satisfy itself that there are no errors in the Deliverables and that the Input Material is no longer required before it is destroyed; or
- 13.3.2 ensures that it arranges storage of the Input Material with the Supplier (at the Customer's cost) (or another storage provider) until the Customer is satisfied that the Input Material is no longer required.
- 13.4 Notwithstanding the provisions of condition 13.3, the Customer must notify the Supplier in writing of any errors or potential errors in the Deliverables within 14 Business Days of receipt of the Deliverables. After this time, there shall be no obligation on the Supplier to rectify any errors in the Deliverables.
- 14 **Data Protection**
- 14.1 The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency for the purpose of the Supplier establishing the Customer's commercial credibility and to protect the Supplier's business interests. Such credit search results may be retained by the Supplier for the duration of the provision of the Services.
- 14.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor (where "controller" and "processor" have the meanings as defined in the Data Protection Legislation). The scope, nature and purpose of the processing carried out by the Supplier, the duration of the processing and the types of Personal Data are set out in Appendix 1.
- 14.3 The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and its duly authorised sub-contractors (which the Customer hereby acknowledges may be located outside of the UK and the EEA) for the duration and purposes of the Contract.
- 14.4 The Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:
- 14.4.1 process that Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws applicable to the Supplier to process the Personal Data (Applicable Data Processing Laws). Where the Supplier is relying on Applicable Data Processing Laws, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Data Processing Laws unless those Applicable Data Processing Laws prohibit the Supplier from so notifying the Customer;
- 14.4.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the Personal Data, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting the Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to the Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 14.4.3 ensure that all personnel who have access to and/or process the Personal Data are obliged to keep the Personal Data confidential; and
- 14.4.4 only transfer Personal Data outside of the UK where the following conditions are fulfilled:
- (a) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
- (b) the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
- (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any of the Personal Data that is transferred; and
- (d) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

- 14.4.5 assist to the Customer, at the Customer's cost, and provided the Customer has provided reasonable prior written notice, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 14.4.6 subject to conditions 3.6 and 13, at the written direction of the Customer, delete or return the Personal Data and copies thereof to the Customer on termination of the agreement unless required by applicable Data Processing Law to store the Personal Data.
- 14.5 The Customer consents to the Supplier using couriers, postal services, document processing, IT hosting, printing, off-site shredding and storage facility providers as third-party processors of the Personal Data under the Contract. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor a written agreement incorporating terms which are substantially similar to those set out in this condition 14. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this condition 14.
- 14.6 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with the breach of this condition 14 by the Customers, its employees or agents and/or the Data Protection Legislation by the Customer, its employees or agents.
- 15 **Termination**
- 15.1 Without prejudice to any other rights or remedies which the Supplier may have, the Supplier may terminate the Contract without liability to it immediately on giving notice to the Customer if:
- 15.1.1 the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 2 Business Days after being notified in writing to make such payment; or
- 15.1.2 the Customer commits a breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 15 Business Days of them being notified in writing of the breach; or
- 15.1.3 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or, (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or, (being a partnership) has any partner to whom any of the foregoing apply; or
- 15.1.4 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- 15.1.5 the Customer (being an individual) is the subject of a bankruptcy petition or order; or
- 15.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the Customer;
- 15.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or
- 15.1.8 a floating charge holder over the assets of that the Customer has become entitled to appoint or has appointed an administrative receiver; or
- 15.1.9 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or
- 15.1.10 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 10 Business Days; or
- 15.1.11 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 15.1.3 to condition 15.1.10 (inclusive); or
- 15.1.12 the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 15.1.13 there is a change of control of the Customer (as defined in section 574 of the Capital Allowances Act 2001); or
- 15.1.14 the financial position of the Customer deteriorates to such an extent that in the opinion of the Supplier the capability of the Customer adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
- 15.1.15 (being an individual) the Customer dies, or by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 15.2 On termination of the Contract for any reason:
- 15.2.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- 15.2.2 the Customer shall promptly return all of the Supplier's Equipment, Pre-existing Materials and Deliverables and immediately cease use of On-line Hosting. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of the Supplier's Equipment, Pre-existing Materials and Deliverables. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- 15.2.3 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 15.3 On termination of the Contract (however arising), conditions 8, 9, 11, 13 and 14 shall survive and continue in full force and effect.
- 16 **Force majeure**
- The Supplier shall have no liability to the Customer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, accidental damage, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 17 **General**
- 17.1 The Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If the Supplier requests a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it.
- 17.2 Subject to condition 17.1, no variation of the Contract shall be valid unless it is in writing by an authorised representative of each party. The Supplier reserves the right to amend these Conditions from time to time to reflect changes in market conditions affecting its business, changes in technology, changes in payment methods, changes in relevant laws and regulatory requirements and changes in its system's capabilities. The Customer shall be subject to the Conditions in force at the time of an Order, unless any changes are required by law or

- government or regulatory authority (in which case, it will apply to Orders the Customer has previously placed which the Supplier has not yet fulfilled).
- 17.3 A waiver of any right or remedy under the Contract is only effective if it is in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 17.4 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 17.5 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 17.6 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision or part-provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 17.7 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 17.8 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly provided in the Contract.
- 17.9 Nothing in this condition 17 shall limit or exclude any liability for fraud.
- 17.10 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 17.11 The Supplier may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under the Contract.
- 17.12 The Supplier may assign, out-source or sub-contract any of the Services or its obligations under the Contract to any third party or engage agents or sub-contractors without obtaining the Customer's permission.
- 17.13 The Supplier shall be entitled to a general lien on all Input Material, Customer's Equipment or Deliverables in the Supplier's possession (including Deliverables which have been paid for) for the unpaid price of all Services provided to the Customer under any Contract.
- 17.14 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.
- 17.15 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 17.16 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 17.17 Any notice required to be given under the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such address as that party may have specified to the other party in writing in accordance with this condition, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail. Any notice sent by e-mail to the Supplier shall be sent to the e-mail address sales@pearl-scan.co.uk or such other e-mail address as notified by the Supplier from time to time.
- 17.18 Any notice shall be deemed to have been received: if delivered personally, when left at the address referred to in condition 17.17; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- 17.19 The provisions of conditions 17.17 and 17.18 shall not apply to the service of any proceedings or other documents in any legal action.
- 17.20 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales.

## Appendix 1

### The subject matter of the processing.

The Supplier's provision of the Services to the Customer under this Contract.

### The duration of the processing.

The period from commencement of the Contract to the date of completion of the Services and thereafter to the extent necessary to enable the Supplier to comply with its legal obligations following expiry or termination of the Agreement.

### The nature and purpose of the processing.

The Supplier will process the personal data only to the extent, and in such a manner, as is necessary for the purposes of providing the Services to the Customer in accordance with this Contract.

### The type of personal data.

Personal data contained in the Input Material, which may include names, addresses, dates of birth, financial information and any other information which would constitute Personal Data and is provided to the Supplier in connection with the Services by the Customer.

### The categories of data subject.

Individuals about whom the Personal Data is provided to the Supplier in connection with the Services by or at the discretion of the Customer.