

## Polytag's Standard Terms and Conditions (Terms)

### 1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in these Terms

**Authorised Users** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services.

**Additional Support Services** support services available to those Customers who purchase QR Pro or UV Enterprise Brand Subscriptions only and more particularly contained in the Plan.

**Applicable Data Protection** means:

**Laws** (a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.

(b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which Polytag is subject, which relates to the protection of personal data.

**Back-up Policy** Polytag's policy for the use of and archiving of Customer Data during its performance of the Services.

**Brand Subscriptions** the subscriptions purchased per territory by the Customer pursuant to clause 9.1 which entitle Authorised Users to access and use the Services for the Subscription Term in accordance with the Terms.

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

**Change of Control** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be interpreted accordingly.

**Codes** 2D Codes, including QR codes and UV invisible data matrix codes/tags.

<b>Confidential Information</b>	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.1.
<b>Contract</b>	these Terms and any selected Plan formed in accordance with clause 3.
<b>Customer Data</b>	the packaging attribute data linked to barcode numbers inputted by the Authorised Users, or Polytag on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services; Codes created by the Customer from the Customer Data and through the use of the Services; and product analytics and interaction data generated from the Customer's use of the Services during the Subscription Term but excluding Polytag Data.
<b>EU GDPR</b>	the General Data Protection Regulation ((EU) 2016/679).
<b>Go Live Date</b>	the point at which the Customer has completed its input of Customer Data onto the platform and the creation of Codes using the Services in the Set-up Period and proceeds to enter into a Contract for Brand Subscription(s) in accordance with these Terms.
<b>Normal Business Hours</b>	9.00 am to 5.00 pm local UK time, each Business Day.
<b>Subscription Order Confirmation</b>	confirmation of the Plan and Go Live Date from Polytag to the Customer either by way of email or wet-ink signature.
<b>Plan</b>	the Brand Subscription plan selected by the Customer via Polytag's Website or the Sales Order Process.
<b>Polytag Data</b>	Codes, scan data or data created and used in relation to recycling and usage patterns of types of packaging, excluding any Customer Data.

<b>Polytag's Website</b>	the website operated by Polytag with the following url: <a href="https://polyt.ag/">https://polyt.ag/</a>
<b>Sales Order Process</b>	the order process whereby the Customer contracts through a means other than through the online ordering process on Polytag's Website, as described in clause 3. This may include, amongst others, contracting with Polytag via an email contracting process or traditional contract completion whereby the parties complete and indicate their intention to purchase a Plan and acceptance of these Terms and submit to Polytag confirmation of the same in hard copy.
<b>Services</b>	the subscription services provided by Polytag to the Customer under this Contract on a per brand basis which allows Authorised Users access to a platform and online dashboard using the Software and made available via Polytag's Website, on which Customers can generate Codes, create consumer-faced landing pages and gain access to related product and packaging analytics based on the Customer Data.
<b>Set-up Period</b>	the period in which the Customer can input Customer Data using the Software to the Polytag platform and create Codes without being able to activate or use those Codes commercially in a live environment.
<b>Software</b>	the online software applications provided by Polytag as part of the Services.
<b>Standard Customer Support Services</b>	support provided by Polytag under certain Brand Subscriptions including a live-chat function and a ticketing system.
<b>Subscription Fees</b>	the subscription fees payable by the Customer to Polytag for the Brand Subscriptions, as set out in the Plan.

<b>Subscription Term</b>	as set out in clause 14 and the Plan.
<b>Support Services</b>	are services included within Brand Subscriptions as described in clause 5.3.
<b>Terms</b>	these terms and conditions, as amended from time to time in accordance with clause 16.
<b>UK GDPR</b>	has the meaning given in the Data Protection Act 2018.
<b>Virus</b>	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
<b>Vulnerability</b>	a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term <b>Vulnerabilities</b> shall be interpreted accordingly.

- 1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.4 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted and includes all subordinate legislation made under that legislation or legislative provision.
- 1.5 Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

## 2. **Set-up Period**

- 2.1 By creating an account on Polytag's platform, the Customer understands and agrees to accept these Terms insofar as they apply to the Set-up Period and to enter into the Set-up Period. The Customer will remain in this Set-up Period until the Go Live Date.
- 2.2 The Customer further understands that it will not be able to use the Services commercially during the Set-up Period and that any support available during the Set-up Period is limited to the live-chat facility and email support.
- 2.3 The Customer acknowledges and agrees that in order to proceed to the Go Live Date it must upload certain information to the Polytag platform through Polytag's Website and use the Software, including packaging attribute data and barcode numbers.
- 2.4 The Customer acknowledges and agrees that it has sole responsibility for the input of such data and the creation of Codes using the Software. Polytag shall have no responsibility or liability in relation to the input of Customer Data or the Customer's use or reliance on Customer Data at any time, nor any error made by the Customer in relation to or arising from the input of such Customer Data to the Polytag platform.
- 2.5 Should the Customer choose not to proceed to the Go Live Date either within a period of 90 days or within a period of 90 days of entering into the Set-up Period, whichever is the shorter, all Customer Data received by Polytag may be disposed of in accordance with clause 14.4.3.
- 2.6 The provisions of clause 3 will apply from the Go Live Date.
- 2.7 The provisions of the following clauses of these Terms apply during the Set-up Period: 1, 2, 4.2 to 4.6 inclusive, 5.2, 6.1, 7.2 to 7.5 inclusive, 8, 10, 11, 12, 13, 15 to 27 inclusive.

## 3. **Basis of Contract - Go Live Date**

- 3.1 Where the Customer selects a Plan via Polytag's Website, the Contract shall be formed at the point at which the Customer has selected and submitted a request for a Plan, indicated acceptance of the Terms and Polytag has in turn issued its acceptance by way of a Subscription Order Confirmation.
- 3.2 Where the Customer selects a Plan through the Sales Order Process the Contract shall be formed at the point at which the Customer has selected and submitted a request for a Plan and indicated its acceptance of the Terms by submitting to Polytag a completed Plan in hard copy and Polytag has in turn issued their acceptance by way of an Subscription Order Confirmation.

- 3.3 Any samples, drawings, descriptive matter or advertising issued by Polytag and any descriptions of the Services are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract nor have any contractual force.
- 3.4 These Terms apply to the Contract and shall be accepted at the point at which the Contract is created to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 3.5 All of these Terms shall apply to the supply of the Services.

#### 4. **Brand Subscriptions**

- 4.1 Subject to the Customer purchasing the Brand Subscriptions in accordance with clause 9.1, the restrictions set out in this clause 4 and the other terms and conditions of these Terms, Polytag hereby grants to the Customer a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Authorised Users to use the Services during the Subscription Term solely for the Customer's internal business operations.
- 4.2 In relation to the Authorised Users, the Customer undertakes that:
- 4.2.1 each Authorised User shall keep a secure password for their use of the Services, that such password shall be changed no less frequently than 6 months and that each Authorised User shall keep their password confidential;
- 4.2.2 it shall maintain a written, up to date list of current Authorised Users and provide such list to Polytag within 5 Business Days of Polytag's written request at any time or times;
- 4.2.3 it shall permit Polytag or Polytag's designated auditor to audit the Services in order to establish the name and password of each Authorised User and the Customer's data processing facilities to audit compliance with these Terms. Each such audit may be conducted no more than once per quarter, at Polytag's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- 4.2.4 if any of the audits referred to in clause 4.2.3 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Polytag's other rights, the Customer shall promptly disable such passwords and Polytag shall not issue any new passwords to any such individual; and

- 4.2.5 if any of the audits referred to in clause 4.2.3 reveal that the Customer has underpaid Subscription Fees to Polytag, then without prejudice to Polytag's other rights, the Customer shall pay to Polytag an amount equal to such underpayment as calculated in accordance with the prices set out in the Plan within 10 Business Days of the date of the relevant audit.
- 4.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- 4.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - 4.3.2 facilitates illegal activity;
  - 4.3.3 depicts sexually explicit images;
  - 4.3.4 promotes unlawful violence;
  - 4.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - 4.3.6 is otherwise illegal or causes damage or injury to any person or property;
- and Polytag reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 4.4 The Customer shall not:
- 4.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Terms:
    - 4.4.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or
    - 4.4.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software or the Services; or
  - 4.4.2 access all or any part of the Services in order to build a product or service which competes with the Services; or
  - 4.4.3 use the Services to provide services to third parties; or

- 4.4.4 subject to clause 21.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users, or
  - 4.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 4; or
  - 4.4.6 introduce or permit the introduction of, any Virus or Vulnerability into the Services or Polytag's network and information systems.
- 4.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify Polytag.
- 4.6 The rights provided under this clause 4 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.
- 5. Services**
- 5.1 Polytag shall, during the Subscription Term, provide the Services to the Customer subject to these Terms.
- 5.2 Polytag shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 5.2.1 planned maintenance carried out during the maintenance window of 8pm to 2.00 am UK time; and
  - 5.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that, Polytag, so far as it is able to in the circumstances, has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 5.3 Polytag will, as part of the Services and at no additional cost to the Customer, provide the Customer with Polytag's Standard Customer Support Services during Normal Business Hours. Additional Support Services may be available, depending upon the Brand Subscription purchased by the Customer, as specified in the Plan.
- 6. Data protection**
- 6.1 Both parties agree to comply with all applicable requirements of Applicable Data Protection Laws.



**7. Polytag's obligations**

- 7.1 Polytag shall perform the Services substantially in accordance with these Terms and with reasonable skill and care.
- 7.2 Polytag's obligations at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Polytag's instructions, or modification or alteration of the Services by any party other than Polytag or Polytag's duly authorised contractors or agents.
- 7.3 Polytag:
- 7.3.1 does not warrant that:
    - 7.3.1.1 the Customer's use of the Services will be uninterrupted or error-free; or
    - 7.3.1.2 that the Services or the information obtained by the Customer through the Services will meet the Customer's requirements; or
    - 7.3.1.3 the Software or the Services will be free from Vulnerabilities or Viruses.
  - 7.3.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities;
  - 7.3.3 is not responsible for any delays, delivery failures, or any other loss or damage whatsoever arising, directly or indirectly from any failure of the Customer to act in accordance with all or any instructions of Polytag provided from time to time in respect of the Services.
- 7.4 These Terms shall not prevent Polytag from entering into similar contracts with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under these Terms.
- 7.5 Polytag warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract.
- 7.6 Polytag shall follow its archiving procedures for Customer Data as set out in its Data Retention and Back-up Policy as such document may be amended by Polytag in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against Polytag shall be for Polytag to use reasonable

commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Polytag in accordance with the archiving procedure described in its Data Retention and Back-up Policy. Polytag shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Polytag to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable.

## 8. **Customer's obligations**

### 8.1 The Customer shall:

#### 8.1.1 provide Polytag with:

8.1.1.1 all necessary co-operation in relation to these Terms; and

8.1.1.2 all necessary access to such information as may be required by Polytag; in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

8.1.2 without affecting its other obligations under these Terms, comply with all applicable laws and regulations with respect to its activities under these Terms;

8.1.3 carry out all other Customer responsibilities set out in these Terms in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Polytag may adjust any agreed timetable or delivery schedule as reasonably necessary;

8.1.4 ensure that the Authorised Users use the Services in accordance with and as prescribed specifically by these Terms, the Support Services, the Additional Support Services (where applicable) and any other instructions provided by Polytag from time to time and shall be responsible for any Authorised User's breach of these Terms;

8.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for Polytag, its contractors and agents to perform their obligations under these Terms, including without limitation the Services;

8.1.6 ensure that its network and systems comply with the relevant specifications provided by Polytag from time to time; and

8.1.7 be, to the extent permitted by law and except as otherwise expressly provided in these Terms, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Polytag's data centres,

and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

8.2 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

9. **Charges and payment**

9.1 The Customer shall pay the Subscription Fees to Polytag for the Brand Subscriptions in accordance with the amounts set out in the Plan.

9.2 The Customer shall on or before the Go Live Date and in any event on selection and submission of a Plan request in accordance with clause 3 provide to Polytag valid, up-to-date and complete credit card details or approved purchase order information acceptable to Polytag and any other relevant valid, up-to-date and complete contact and billing details and:

9.2.1 where the Customer provides its credit card details to Polytag, the Customer hereby authorises Polytag to bill such credit card:

9.2.1.1 on the Go Live Date for the Subscription Fees payable for the Subscription Term; and

9.2.1.2 subject to clause 9.1, on each anniversary of the Go Live Date for the Subscription Fees payable in respect of the next Renewal Period; or

9.2.2 where the Customer provides its approved purchase order information to Polytag in the format prescribed by clause 9.2, Polytag shall invoice the Customer:

9.2.2.1 on the Go Live Date, Subscription Fees payable for the Subscription Term; and

9.2.2.2 subject to clause 9.1 at least 30 days prior to each anniversary of the Go Live Date for the Subscription Fees payable in respect of the next Renewal Period.

9.3 The Customer shall pay each invoice within 30 days of the date of invoice.

9.4 If Polytag has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Polytag :

9.4.1 Polytag may, on no less than 5 Business Days' notice to the Customer and without liability to the Customer, disable the Customer's password and account and suspend

access to all or part of the Services and Polytag shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

9.4.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current Bank of England base lending rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.5 All amounts and fees stated or referred to in these Terms:

9.5.1 shall be payable in Great British Pound Sterling, unless otherwise agreed.

9.5.2 are, subject to clause 13.3.2, non-cancellable and non-refundable;

9.5.3 are exclusive of value added tax, which shall be added to Polytag's invoice(s) at the appropriate rate.

9.6 Polytag reserves the right to increase the Subscription Fees for any Renewal Period provided that it notifies the Customer of the same not less than 3 calendar months before expiry of the Subscription Term (or a Renewal Period, where applicable).

## 10. **Proprietary rights**

10.1 The Customer acknowledges and agrees that Polytag and/or its licensors own all intellectual property rights in the Software, Polytag's Website and Polytag Data. Except as expressly stated herein, these Terms do not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, Polytag's Website and Polytag Data.

10.2 Polytag confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, these Terms.

## 11. **Confidentiality**

11.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other belongs, except as permitted by clause 11.2

11.2 Each party may disclose the other party's confidential information to its employees, officers, representatives, contractors or subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with these Terms.

12. **Anti-bribery and anti-corruption**

12.1 Polytag shall during the term of the Contract:

12.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010

12.1.2 notify the Customer in writing if it becomes aware of any breach of clause 12.1.1 or has reason to believe that it has received a request or demand for any undue financial or other advantage in connection with the performance of the Contract.

13. **Limitation of liability**

13.1 Except as expressly and specifically provided in these Terms:

13.1.1 the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use. Polytag shall have no liability for any damage caused by errors or omissions in any Customer Data, information, instructions or scripts provided to Polytag by the Customer in connection with the Services, or any actions taken by Polytag at the Customer's direction;

13.1.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Terms; and

13.1.3 the Services are provided to the Customer on an "as is" basis.

13.2 Nothing in these Terms excludes the liability of Polytag:

13.2.1 for death or personal injury caused by Polytag's negligence; or

13.2.2 for fraud or fraudulent misrepresentation.

13.3 Subject to clause 13.1 and clause 13.2;

13.3.1 Polytag shall have no liability for any:

13.3.1.1 loss of profits,

13.3.1.2 loss of business,

13.3.1.3 wasted expenditure,

13.3.1.4 depletion of goodwill and/or similar losses,

13.3.1.5 loss or corruption of data or information, or

13.3.1.6 any special, indirect or consequential loss, costs, damages, charges or expenses; and

- 13.3.2 Polytag's total aggregate liability to the Customer in respect of all breaches of duty occurring within any contract year shall not exceed the cap (as detailed below). If breaches committed in more than one contract year give rise to a single claim or a series of connected claims, Polytag's total liability for those claims shall not exceed the single highest annual cap for those contract years.
- 13.3.3 In clause 13.3.2 the cap is the total Subscription Fees paid during the Subscription Term in which the breaches occurred.
- 13.4 References to liability in this clause 13 include every kind of liability arising under or in connection with these Terms including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 13.5 Nothing in these Terms excludes the liability of the Customer for any breach, infringement or misappropriation of Polytag's intellectual property rights.
14. **Term and Termination**
- 14.1 This Contract shall, unless otherwise terminated as provided in this clause commence on the Go Live Date and shall continue for the Subscription Term and, thereafter, this Contract shall be automatically renewed for successive periods as specified in the Plan (each a **Renewal Period**), unless:
- 14.1.1 either party notifies the other party of termination, in writing, at least 60 days before the end of the Subscription Term or any Renewal Period, in which case this Contract shall terminate upon the expiry of the applicable Subscription Term or Renewal Period; or
- 14.1.2 otherwise terminated in accordance with the provisions of these Terms.
- 14.2 The Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.
- 14.3 Without affecting any other right or remedy available to it, either party may terminate this Contract with immediate effect by giving written notice to the other party if:
- 14.3.1 the other party fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- 14.3.2 the other party commits a material breach of any other term of this Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

- 14.3.3 the other party 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- 14.3.4 the other party 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 other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 14.3.5 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- 14.3.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 14.3.7 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 other party (being a company, partnership or limited liability partnership);
- 14.3.8 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- 14.3.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 14.3.10 a creditor or encumbrancer of the other party 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 the other party's assets and such attachment or process is not discharged within 14 days;

- 14.3.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.3.3 to clause 14.3.11(inclusive);
- 14.3.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 14.3.13 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to these Terms is in jeopardy; or
- 14.3.14 there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 14.4 On termination of this Contract for any reason:
- 14.4.1 all licences granted under these Terms shall immediately terminate and the Customer shall immediately cease all use of the Services;
- 14.4.2 each party shall return and make no further use of any equipment, property and other items (and all copies of them) belonging to the other party;
- 14.4.3 Polytag may destroy or otherwise dispose of any of the Customer Data in its possession unless Polytag receives, no later than ten days after the effective date of the termination of this Contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Polytag shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all expenses incurred by Polytag in returning or disposing of Customer Data; and
- 14.4.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

15. **Force majeure**

Neither party shall be in breach of this Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended



accordingly. If the period of delay or non-performance continues for 90 days, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

**16. Variation**

No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**17. Waiver**

17.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

17.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**18. Rights and remedies**

Except as expressly provided in these Terms, the rights and remedies provided under these Terms are in addition to, and not exclusive of, any rights or remedies provided by law.

**19. Severance**

19.1 If any provision or part-provision of these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these Terms.

19.2 If any provision or part-provision of these Terms is deemed deleted under clause 19.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**20. Entire agreement**

20.1 The Plan and these Terms constitute the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

20.2 Each party acknowledges that in entering into this Contract it does not rely on and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms.

20.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Terms.

20.4 Nothing in this clause shall limit or exclude any liability for fraud.

21. **Assignment**

21.1 The Customer shall not, without the prior written consent of Polytag, assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Contract.

21.2 Polytag may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under these Terms provided that it gives prior written notice of such dealing to the Customer.

22. **No partnership or agency**

Nothing in these Terms is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23. **Third party rights**

23.1 Unless it expressly states otherwise, these Terms do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

23.2 The rights of the parties to rescind or vary this Contract are not subject to the consent of any other person.

24. **Counterparts**

24.1 This Contract may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one contract.

24.2 Transmission of an executed counterpart of this Contract (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this Contract. If either method of transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the other with the "wet ink" hard copy original of their counterpart.

24.3 No counterpart shall be effective until each party has provided to the other at least one executed counterpart.

25. **Notices**

25.1 Any notice given to a party under or in connection with this Contract shall be in writing and shall be:

- 25.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - 25.1.2 sent by email to the address specified by each party for such purposes.
- 25.2 Any notice shall be deemed to have been received:
- 25.2.1 if delivered by hand, at the time the notice is left at the proper address;
  - 25.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - 25.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 25.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

26. **Governing law**

This 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 interpreted in accordance with the law of England and Wales.

27. **Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).