
RIVIAM DIGITAL CARE

G-Cloud 15 Terms and Conditions

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Terms and Conditions for G-Cloud 15

THIS AGREEMENT IS DATED

PARTIES

- (1) **RIVIAM DIGITAL CARE LIMITED** incorporated and registered in England and Wales with company number 04543806 whose registered office is at Cooper House, Lower Charlton Estate, Shepton Mallet, Somerset, England, BA4 5QE (**RIVIAM**)
- (2) **G-Cloud Customer (the Customer).**

BACKGROUND

- (A) RIVIAM provides online software applications and platforms for the purpose of providing support for health and social care information management.
- (B) RIVIAM is in the business of providing the Services.
- (C) The Customer wishes to obtain, and RIVIAM wishes to provide the Services on the terms set out in this agreement.

AGREED TERMS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Applicable Data Protection Laws: means the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data (including, without limitation, the UK GDPR and the privacy of electronic communications).

Applicable Laws: all applicable laws, statutes, regulations from time to time in force.

Available Services: the provision of online software applications, online platforms and consultancy services which RIVIAM is willing to provide to the Customer set out at www.riviam.com/what-we-do.

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

Business Hours: from 09:00 to 17:30.

Commencement Date: the date of this agreement.

Contract: a contract for the provision of Services by RIVIAM to the Customer as set out in a Work Order agreed in accordance with clause 3 a template of which is at Schedule 1.

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

controller, processor, data subject, personal data, personal data breach and processing shall have the meaning given to them in the UK GDPR.

Confidential Information: information that a reasonable business person would regard as proprietary or confidential or identified as Confidential Information in clause 7.5 or 7.6.

Customer Personal Data: any personal data which RIVIAM processes in connection with the Services, in the capacity of a processor on behalf of the Customer.

Documentation: the documents made available to the Customer by RIVIAM from time to time including (without limitation) online via the web address set out in the Work Order or such other web address notified by RIVIAM to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

Good Industry Practice: means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier similar in size and experience to RIVIAM engaged in the development and/or supply of products similar to the Software and/or supply of services similar to the Services under the same or similar circumstances as those applicable to the Agreement, including in accordance with any codes of practice published by relevant trade associations;

Group: in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a member of the Group.

Intellectual property: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

NHS Customer: is an NHS organisation that commissions the Customer to deliver services under an NHS contract.

Per Referral Cohort Price: Is the price per referral based on the total annual number of referrals that the Customer is contracted to manage with its NHS Customer on an annual basis.

Service Conditions: the terms and conditions set out at Schedule 2 which are incorporated into each Contract.

Services: the Software subscription services provided by Riviam to the Customer under a Contract as identified in a Work Order as described in the Documentation.

Software: the online software applications and platforms provided by Riviam as part of the Services under a Contract as identified in the Work Order and more particularly described in the Documentation.

Special Terms: means any special terms and conditions to apply to a Contract agreed between the parties as set out in the Work Order

Total Annual Number of Contract Referrals: is the cohort number of referrals contracted with a NHS Customer and is represented by a work order in this contract.

Total Number of Annual Referrals: is the total annual number of contract referrals calculated by adding up all work orders in place.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

Virus: means any computer code which would disable, disrupt, harm, impede or modify the performance or functionality of all of any part of any system, program, equipment network or data, including “trojans”, worms, “logic bombs” and “cancelbots” as the same may generally be understood within the computing industry from time to time.

Work Order: the document or written communication describing the Services to be provided by RIVIAM and agreed in accordance with clause 3.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.9 A reference to writing or written excludes faxes and includes e-mail.
- 1.10 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule to this agreement.
- 1.11 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. COMMENCEMENT AND DURATION

- 2.1 This agreement shall commence on the Commencement Date, unless terminated earlier in accordance with clause 7 (Termination)
- 2.2 The termination of any Contract shall not affect any other Contracts or this agreement.
- 2.3 The parties shall not enter into any further Contracts after the date on which notice to terminate is served under clause 7.
- 2.4 The Customer may procure any of the Available Services by agreeing a Work Order with RIVIAM pursuant to clause 3.
- 2.5 RIVIAM shall provide the Services from the date specified in the relevant Work Order.

3. WORK ORDER PROCESS

- 3.1 This framework agreement governs the overall relationship of the parties in relation to the Software and Services provided by RIVIAM to the Customer and sets out:
 - (a) in this clause 3, the procedure for the Customer to request the provision of Services from RIVIAM under separate Contracts; and
 - (b) in Schedule 1, the template Work Order to be entered into by RIVIAM and the Customer.
- 3.2 The Customer Affiliates shall be entitled from time to time to request in writing the provision of any or all of the Available Services from RIVIAM.

- 3.3 A Contract shall not enter into force, be legally binding or have any other effect unless:
- (a) the Work Order has been signed by the authorised representatives of RIVIAM and the Customer; and
 - (b) as at the date the Work Order is signed, this agreement has not been terminated.
- 3.4 Each Contract:
- (a) shall be entered into by the Customer and RIVIAM;
 - (b) shall incorporate the Service Conditions;
 - (c) shall incorporate any additional conditions (Special Terms) set out in the Work Order; and
 - (d) forms a separate contract between its signatories.

4. WARRANTIES

4.1 RIVIAM warrants that:

- (a) it has the right to enter into this agreement and to grant to the Customer a licence or sub-licence to use the Software as contemplated by this agreement;
- (b) the Software will conform in all material respects to the Work Order and be free from defects;
- (c) it shall perform the Services in accordance with Good Industry Practice and shall use its reasonable endeavours to meet or exceed any service levels, key performance indicators or other commitments agreed by RIVIAM in the agreement (including any documents referenced therein);
- (d) the Software and the media on which the Software is delivered have been checked with up to date anti-Virus software to minimise the risk that they are subject to Viruses and other malicious code, it has taken all necessary and appropriate steps consistent with Good Industry Practice to avoid the intrusion of Viruses or other malicious code; and it has not knowingly inserted any Virus or malicious code in the Software or media;
- (e) as far as it is aware and after making all pertinent enquiries the provision of the Services and/or Software shall not infringe the Intellectual Property Rights of any third party;
- (f) the Software shall at all times comply with all Applicable Laws;
- (g) it will perform the Services with reasonable care, skill and diligence in accordance with Applicable Laws and Good Industry Practice;
- (h) in providing the Services, it shall use Personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the RIVIAM's obligations are fulfilled in accordance with the agreement and the applicable Work Order;
- (i) it will ensure that the Services will conform with all descriptions and specifications set out in the applicable Work Order and that the Documentation shall be fit for purpose;
- (j) it will comply with the principles and processes of ISO 27001;
- (k) it will not knowingly or recklessly do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on upon which it relies for the purposes of conducting its business.

5. INSURANCE

- 5.1 For the Term and a period of six (6) years after the Term, RIVIAM shall ensure that it has and maintains insurance cover of a sufficient value to cover all of its activities carried out pursuant to or in relation to the agreement, as well as any other insurance required by law. Such insurances shall be maintained with reputable insurers and RIVIAM shall produce evidence to the Customer, on reasonable request and whether by broker's letter or otherwise, that it has in place adequate insurance policies and payment of all premiums due on each policy.

6. LIMITATION OF LIABILITY

- 6.1 Save as expressly set out in this agreement, this clause 6 sets out the financial liability of RIVIAM (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

6.2 Nothing in this agreement excludes the liability of RIVIAM:

- (a) for death or personal injury caused by RIVIAM's negligence; or

- (b) for fraud or fraudulent misrepresentation.

6.3 Subject to clause 6.2:

- (a) RIVIAM shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement;
- (b) RIVIAM's total aggregate liability to the Customer arising under or in connection with this framework agreement and all Contracts entered into between the parties shall be limited to £2,000,000.00 per claim commencing on each anniversary of the Commencement Date.

7. TERMINATION

7.1 Without affecting any other right or remedy available to it, either party may terminate this agreement and/or each Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 21 days after being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (c) 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 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 Insolvency Act 1986;
- (d) 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 (being a company) 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;
- (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (f) 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 the other party (being a company, limited liability partnership or partnership) 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;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (h) 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;
- (i) 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;

- (j) 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;
- (k) 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 7.1 (c) to clause 7.1(j) (inclusive);
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (m) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy; or
- (n) there is a change of control of the other party.

7.2 Without affecting any other right or remedy available to it, and provided there are no Work Orders in force, either party may terminate this agreement by giving not less than 3 months written notice to the other party such notice to expire on or after the first anniversary of the Set-up Service Commencement Date (as defined in Schedule 3).

8. TERMINATION ASSISTANCE

8.1 In the event of termination or expiry of the agreement (howsoever caused and including partial termination) and without prejudice to its obligations under Paragraph 5, RIVIAM shall (if requested by the Customer) assist the Customer and/or any replacement supplier to ensure the orderly transition of the Services to the Customer and/or any replacement supplier (**Transitional Services**). Such assistance shall include a process for the Customer to transfer Customer Data (in such form as agreed by the parties) from RIVIAM to the Customer following such termination or expiry.

8.2 The Customer shall pay RIVIAM for the provision of the Transitional Services which shall be calculated in accordance with RIVIAM's then current charges or as otherwise stated in the Work Order.

9. BUSINESS CONTINUITY

9.1 During the Term, RIVIAM shall ensure that it has in place a plan to ensure continued performance of the Services upon the occurrence of an actual or potential incident or event which is reasonably likely to impact RIVIAM's provision of the Services (in whole or in part) ("Business Continuity Plan"). RIVIAM shall update the Business Continuity Plan regularly, and in any event, every six months during the Term and shall undertake tests of its Business Continuity Plan at least annually.

10. AUDIT

10.1 RIVIAM shall permit the Customer, or a third-party auditor nominated by the Customer, on at least 14 days written notice to conduct at the Customer's cost, remote data privacy and security audits, assessments and remote inspections concerning RIVIAM's data security and privacy procedures relating to its compliance with the agreement and the Applicable Data Protection Laws. The Customer agrees that: (i) any auditor it appoints shall be subject to a duty of confidentiality and shall not be permitted to review RIVIAM's financial or commercially sensitive information or Confidential Information; and (ii) it shall not appoint a competitor of RIVIAM as an auditor.

10.2 Notwithstanding Paragraph 10.1, the Customer acknowledges that if RIVIAM uses third party providers of cloud services ("Third Party Cloud Providers"), the terms of RIVIAM's agreements with those Third Party Cloud Providers may not permit RIVIAM to undertake audits of those Third Party Cloud Providers' systems. Accordingly, where the Customer requests a remote audit

pursuant to Paragraph 10.1, RIVIAM shall notify the Customer if such audit cannot extend to those aspects of the Services that are hosted on that Third Party Cloud Provider's systems. In addition, RIVIAM shall provide that Third Party Cloud Provider's security and privacy terms if such would not cause RIVIAM to be in breach of its own confidentiality obligations.

- 10.3 The Customer may, in its sole discretion, require RIVIAM to provide evidence of its compliance with the agreement and the Applicable Data Protection Laws in lieu of conducting such audit, assessment or inspection pursuant to Paragraph 10.1.

11. DATA PROTECTION

- 11.1 Both parties will comply with all applicable requirements of the Applicable Data Protection Laws. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 11.2 The parties have determined that for the purposes of Applicable Data Protection Laws RIVIAM shall process the personal data as set out below as processor on behalf of the Customer and the Customer shall be the controller of the personal data as between RIVIAM and the Customer.
- 11.3 Should the determination in clause 11.2 change, the parties shall use all reasonable endeavours make any changes that are necessary to this clause 11.
- 11.4 Without prejudice to clause 11.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Customer Personal Data to RIVIAM or lawful collection of the same by RIVIAM for the duration and purposes of the Services.
- 11.5 In relation to the Customer Personal Data, each Work Order shall set out the scope, nature and purpose of processing by RIVIAM, the duration of the processing and the types of personal data and categories of data subject.
- 11.6 Without prejudice to clause 11.1, RIVIAM shall, in relation to Customer Personal data:
- (a) process that Customer Personal Data only on the documented instructions of the Customer, which shall be to process the Customer Personal Data for the purposes set out in clause 11.7 unless RIVIAM is required by Applicable Laws to otherwise process that Customer Personal Data (Purpose). Where RIVIAM is relying on Applicable Laws as the basis for processing Customer Personal Data, RIVIAM shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit RIVIAM from so notifying the Customer on important grounds of public interest. RIVIAM shall inform the Customer if, in the opinion of RIVIAM, the instructions of the Customer infringe Applicable Data Protection Laws;
 - (b) implement the technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, having regard to the state of technological development and the cost of implementing any measures;
 - (c) ensure that any personnel engaged and authorised by RIVIAM to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
 - (d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to RIVIAM), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (e) notify the Customer without undue delay and in any event within 48 hours on becoming aware of a personal data breach involving the Customer Personal Data;

- (f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Contract unless RIVIAM is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this clause 11.8(f), Customer Personal Data shall be considered deleted where it is put beyond further use by RIVIAM; and
- (g) maintain records to demonstrate its compliance with this clause 11.

11.7 The Customer provides its prior, general authorisation for RIVIAM to:

- (a) appoint sub-processors to process the Customer Personal Data, including those set out in the Work Order, provided that RIVIAM:
 - (i) shall ensure that the terms on which it appoints such sub-processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on RIVIAM in this clause 11;
 - (ii) shall remain responsible for the acts and omissions of any such sub-processor as if they were the acts and omissions of RIVIAM; and
 - (iii) shall inform the Customer by written notice of any intended changes concerning the addition or replacement of the sub-processors and obtain the Customer's the opportunity to consent to such changes (with such consent not to be unreasonably withheld). .
- (b) Only the Customer Personal Data referred to in the Work Order may be transferred outside of the UK if required for the Purpose subject to RIVIAM complying with all applicable obligations in respect of any such transfers, including but not limited to:
 - i. RIVIAM having completed an appropriate transfer impact assessment;
 - ii. ensuring that the transfer is subject to appropriate safeguards which ensure an adequate level of protection in respect of the Personal Data being transferred;
 - iii. ensuring that the transfer is made subject to an appropriate adequacy mechanism (including the IDTA or the UK Addendum);
 - iv. RIVIAM complying with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - v. RIVIAM making available to Customer on request:
 - A. full details of the sub-processor; and
 - B. copies of the i) transfer impact assessment as referred to in paragraph 11.7(b)i. and ii) adequacy mechanism as referred to in paragraph 11.7(b)ii.
- (c) For these purposes, the Customer shall promptly comply with any reasonable request of RIVIAM, including any request to enter into standard data protection clauses adopted by the Information Commissioner's Office from time to time. Any other Customer Personal Data may not be transferred or otherwise processed outside the UK or the EEA without first obtaining the Customer's prior written consent.
- (d) Either party may, at any time on not less than 30 days' notice and by mutual agreement, revise this clause 6 (Data protection) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

12. CONFIDENTIALITY

- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement or a Contract. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 12.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement or a Contract.
- 12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 12.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party (except that RIVIAM shall remain responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any of those third parties sub-contracted by RIVIAM to perform services related to Customer Data maintenance and back-up).
- 12.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute RIVIAM's Confidential Information.
- 12.6 RIVIAM acknowledges that the Customer Data is the Confidential Information of the Customer.
- 12.7 This clause 0 shall survive termination of this agreement and each Contract, however arising.
- 12.8 No party shall make, or permit any person to make, any public announcement concerning this agreement or a Contract without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

13. SURVIVAL

- 13.1 On termination (or expiry) of this agreement, howsoever arising, each Contract then in force at the date of such termination shall continue in full force and effect for the remainder of the term of such Contract, unless terminated earlier in accordance with the terms of such Contract.
- 13.2 The termination of any Contract shall not affect any other Contracts or this agreement,
- 13.3 On termination of this agreement, the following clauses shall continue in force: clause 1 (Interpretation), clause 5 (Limitation of liability), clause 9 (Survival), clause 8 (Confidentiality), clause 20 (Mediation) and 21 (Governing law & Jurisdiction) .

14. CONFLICT

If there is an inconsistency between any of the provisions in the main body of this agreement, the Service Conditions, the Work Order and/or the Special Terms, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list:

- a. the Special Conditions
- b. the Work Order
- c. the Service Conditions
- d. this agreement.

15. VARIATION

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

16. WAIVER

- 16.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17. RIGHTS AND REMEDIES

- 17.1 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

18. SEVERANCE

- 18.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 18.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

19. ENTIRE AGREEMENT

- 19.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 19.2 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

20. ASSIGNMENT

- 20.1 Neither party shall, without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

21. NO PARTNERSHIP OR AGENCY

- 21.1 Nothing in this agreement 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).

22. THIRD PARTY RIGHTS

- 22.1 This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

23. NOTICES

- 23.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be 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 sent by email to the address specified by a party (as the case may be) or as confirmed in writing by a party to the other.
- 23.2 Any notice or communication shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
 - (b) 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
 - (c) 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. In this clause 11.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 23.3 This clause 23 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

24. MEDIATION

- 24.1 If any dispute arises in connection with this agreement, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties within 14 Business Days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (ADR notice) to the other party to the dispute, referring the dispute to mediation. A copy of the referral should be sent to CEDR.
- 24.2 If there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, upon which the parties cannot agree within 14 Business Days from the date of the ADR Notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them.
- 24.3 Unless otherwise agreed, the mediation will start not later than 25 Business Days after the date of the ADR notice. No party may commence any court proceedings in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

25. GOVERNING LAW & JURISDICTION

- 25.1 This agreement 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 the law of England and Wales.
- 25.2 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 agreement or its subject matter or formation (including non-contractual disputes or claims).

THIS AGREEMENT has been entered into on the date stated at the beginning of it.