



COMPUTER NETWORK DEFENCE

Standard Terms and Conditions for Supply of Services

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THIS AGREEMENT is effective as of the date of the final signature (“Effective Date”)

BACKGROUND:

The Client wishes to engage the Supplier for the provision of its services, and the Supplier is willing to provide the Services to the Client as set out in Schedules, and in accordance with the terms of this Agreement.

IT IS AGREED:

1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in this Agreement.

- 1.1.1 **“Agreement”** means these terms and conditions, and any Schedules agreed in accordance with clause 3;
- 1.1.2 **“ADR Notice”** Alternative Dispute Resolution means a formal notice that initiates an alternative dispute resolution process, typically mediation, negotiation or arbitration, to resolve a conflict without going to court.
- 1.1.3 **“Business Day”** means a 7.5 hour working day, between the hours of 9.00am to 5.00pm Monday to Friday inclusive, excluding public holidays in England and Wales, unless otherwise stated in a Schedule;
- 1.1.4 **“Charges”** means the charges as set out in each Schedule;
- 1.1.5 **“Client’s Equipment”** means any equipment, systems, cabling or facilities provided by the Client, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services;
- 1.1.6 **“Confidential Information”** means any information of a confidential nature, including any Input Material (in the case of the Client), Pre-existing Material (in the case of the Supplier), technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature or any other confidential information concerning the disclosing Party’s business or its products which the receiving Party may obtain in connection with entering into this Agreement;
- 1.1.7 **“Change of Control”**, means the transfer of ownership or control of a company or a significant portion of its assets, often triggered by events such as mergers, acquisitions or significant changes in ownership or voting powers;
- 1.1.8 **“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “processing” and “appropriate technical and organisational measures”** have the meanings set out in the Data Protection Legislation;
- 1.1.9 **“Data Protection Legislation”** means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);
- 1.1.10 **“Deliverables”** means all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services in any form, including those specified in each Schedule;
- 1.1.11 **“Document”** includes, 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;
- 1.1.12 **“Input Material”** means all Documents, information and materials in any form, whether owned by the Client or a third party, which are provided by the Client or its agents, subcontractors, consultants, or employees to the Supplier relating to Client’s business or the Services, including those specified in each Schedule;
- 1.1.13 **“Intellectual Property Rights” or “IPR”** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets), 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;
- 1.1.14 **“Material Breach”** means a material breach occurs when one party fails to fulfil their contractual obligations in a way that significantly undermines the purpose of the agreement. This could include failure to deliver essential services, breach of confidentiality, or other actions that damage the trust and cooperation between parties;
- 1.1.15 **“Pre-existing Materials”** means all Documents, information and materials (and any updates or modifications



made to them at any time) provided by the Supplier or its agents, subcontractors, consultants or employees to the Client relating to the Services, which existed prior to the commencement of this Agreement or are developed independently of it, including those specified in any relevant Schedule;

- 1.1.16 **"Schedule Commencement Date"** means the date each Schedule is to commence as stated in that Schedule;
- 1.1.17 **"Schedule"** means an agreement for the provision of Services by the Supplier to the Client agreed in accordance with clause 3, a template of which is at Annex 1;
- 1.1.18 **"Services"** means the services to be provided by the Supplier under this Agreement, as set out in each Schedule;
- 1.1.19 **"Supplier's Equipment"** means any equipment, including tools, systems, cabling or facilities, provided by the Supplier, its subcontractors, consultants or 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 Client;
- 1.1.20 **"Supplier's Team"** means the Supplier's Manager and all employees, consultants, agents and subcontractors engaged in relation to the Services; and
- 1.1.21 **"VAT"** means value added tax chargeable under the Value Added Tax Act 1994.
- 1.2 Clause and schedule headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes a natural person, 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 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time. A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.6 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 The Supplier shall provide the Services to the Client in accordance with the terms and conditions of this Agreement.
- 2.2 Neither Party seeks to create or imply any mutuality of obligation between the Parties in the course of the performance of this Agreement for Services or during any notice period.
- 2.3 This Agreement shall commence on the Effective Date and continue for a minimum period of 12 months unless otherwise specified in the Schedule and, after that, shall continue until terminated:
 - 2.3.1 by one of the Parties giving the other at least 28 days' notice in writing (or as otherwise agreed by the Parties in writing); or
 - 2.3.2 otherwise in accordance with the terms of this Agreement.
- 2.4 Any annual subscription services included within the Schedule accompanying this agreement must be renewed on or before the renewal date as any existing configuration will be deleted should this agreement be terminated.
- 2.5 Notice served in accordance with clause 2.3.1 shall only expire when all Schedules active at the point at which notice is served are completed, expired, and/or terminated.

3. PROCESS FOR AGREEING SCHEDULES

- 3.1 This Agreement governs the overall relationship of the Parties in relation to the Services provided by the Supplier to Client, and sets out:
 - 3.1.1 in this clause 3, the procedure for Client to request the provision of Services from the Supplier to be detailed in separate Schedules; and
 - 3.1.2 in Annex 1, the template Schedule containing all the relevant commercial terms to be entered into by the Supplier and Client.
- 3.2 Client shall be entitled from time to time to request in writing the provision of services from the Supplier. Following receipt of such request, the Supplier shall confirm to Client whether it is able to provide the requested services. Subject to receiving sufficient information from the Client, the Supplier shall complete the template Schedule and submit the draft to the Client for its written approval. If the Supplier provides a draft Schedule to the Client, the Parties shall discuss and agree that draft Schedule and sign it, if and when it is agreed.
- 3.3 A Schedule shall not enter into force, be legally binding or have any other effect unless:



- 3.3.1 the Schedule has been signed by the authorised representatives of both Parties to it; and
- 3.3.2 as at the date the Schedule is signed, this Agreement has not been terminated.
- 3.4 Each Schedule:
 - 3.4.1 shall be entered into by Client and the Supplier;
 - 3.4.2 shall form a part of, and be subject to the terms of, this Agreement; and
 - 3.4.3 shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 3.5 Each Schedule shall come into force on the relevant Schedule Commencement Date.
- 3.6 Each Schedule shall, unless terminated earlier in accordance with this Agreement, continue until the Services are completed.

4. INTRODUCTION FEES

- 4.1 The Client shall not, without the prior written consent of the Supplier, at any time during the term of a Schedule and for six months after termination or expiry of the Schedule, solicit or entice away from the Supplier or employ, engage or attempt to employ or engage any person who is, or has been, a member of the Supplier's Team in the provision of the Services under that Schedule (and the Client shall also be restricted from soliciting or enticing away the individual in order to introduce them to a third party with a view to that third party employing or engaging the individual).
- 4.2 Any consent given by the Supplier in accordance with clause 4.1 shall be subject to the Client paying to the Supplier a sum equivalent to 25% of the then current annual remuneration of the relevant individual or, if higher, 25% of the annual remuneration to be paid by the Client (or, if applicable, the third party) to that individual (in either case, the "Introduction Fee").
- 4.3 The Supplier will not refund the Introduction Fee if the engagement subsequently terminates.
- 4.4 VAT is payable in addition to any Introduction Fee due.

5. SUPPLIER'S RESPONSIBILITIES

- 5.1 The Supplier shall provide the Services to the Client in accordance with each Schedule.
- 5.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in each Schedule, but (unless otherwise agreed by the Parties in writing or as set out in a Schedule) any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this Agreement. In the event of delays caused by factors within the Supplier's control, the Supplier shall promptly inform the Client of the reasons for such delays and the steps being taken to mitigate them.
- 5.3 The Supplier shall:
 - 5.3.1 co-operate with the Client in all matters relating to the Services;
 - 5.3.2 provide all the Supplier's Equipment required to provide the Services and shall ensure that all items are fit for purpose and free from material defects in installation;
 - 5.3.3 ensure that all goods, materials, standards, and techniques used in providing the Services are of good quality and are free from material defects in workmanship, installation, and design;
 - 5.3.4 comply with all applicable laws and regulations relating to the provision of the Services;
 - 5.3.5 allocate sufficient staff to the Supplier's Team and ensure each member of the Supplier's Team has suitable experience, seniority and qualifications to perform the Services. The Supplier shall use reasonable endeavours to maintain consistency in the management and delivery of the Services;
 - 5.3.6 use in the provision of the Services any member of the Supplier's Team identified in a Schedule as being key personnel ("Key Personnel");
 - 5.3.7 promptly inform the Client of the absence (or anticipated absence) of any Key Personnel;
 - 5.3.8 use reasonable endeavours not to make any changes to the Key Personnel other than due to sickness, maternity leave, redundancies, or departures without the prior written approval of the Client (such approval not to be unreasonably withheld or delayed);
 - 5.3.9 ensure that the Supplier's Team use reasonable care in the performance of the Services and that they observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's premises. The Client reserves the right to refuse the Supplier's Team access to the Client's premises on reasonable grounds, which shall only be given to the extent necessary for the performance of the



Services;

- 5.3.10 notify the Client as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and
- 5.3.11 before the date on which the Services are to start, obtain, and at all times maintain, all necessary licences and consents necessary for the performance of the Services, the installation of any of the Supplier's Equipment, and the use of all Pre-existing Materials.
- 5.4 The Supplier shall appoint a manager for the Services for each Schedule as identified in the Schedule ("**Supplier's Manager**"). That person shall have authority to contractually bind the Supplier on all matters relating to the Services. The Supplier may replace the Supplier Manager from time to time where reasonably necessary in the interests of the Supplier's business.
- 5.5 The Supplier is not responsible or liable for any delays, delivery failures, or any other loss or damage resulting from
 - 5.5.1 the provision of Services over communications networks and facilities, including the internet and as such the provision of Services may be subject to limitations, delays, and other problems inherent in the use of such communications facilities; and/or
 - 5.5.2 any security threat or attack that would circumvent or not be detected by reasonable and industry-typical security measures (but for the avoidance of doubt the Supplier shall not have relief from liability to the extent such loss or damage is caused or exacerbated by the Supplier's negligence or breach of this Agreement).

6. RELIEF EVENTS

- 6.1 Supplier shall not be liable for any failure or delay in performing its obligations under this Agreement caused by the following:
 - 6.1.1 any act or omission of the Client, its agents, subcontractors, consultants or employees, including any failure or delay by the Client in performing its obligations as set out in this Agreement (including without limitation the Client not providing the resources, access to personnel, premises or systems, or information or feedback, required for Supplier to perform the Services);
 - 6.1.2 specifically, the Client not providing Supplier with complete and accurate information regarding its IT and network infrastructure or full visibility of all security events and issues that have arisen within the Client's systems;
 - 6.1.3 any act or omission of any third-party not acting under the authority or control of Supplier;
 - 6.1.4 any request by the Client to change the scope of the Services; or
 - 6.1.5 any Force Majeure Event,
(each a "**Relief Event**").
- 6.2 If a Relief Event causes a delay in or prevents Supplier's performance of the Services, then Supplier will be entitled to a reasonable extension of time for performance of those parts of the Services affected by that Relief Event. If a Relief Event necessitates a change to a Schedule or this Agreement, the Parties shall agree the change in accordance with clause 8.

7. CLIENT'S OBLIGATIONS

- 7.1 The Client shall:
 - 7.1.1 co-operate with the Supplier in all matters relating to the Services;
 - 7.1.2 comply with all applicable laws in receiving the Services;
 - 7.1.3 provide the Supplier's Team, in a timely manner and at no charge, such access to the Client's premises, staff, information and data, and other facilities as may reasonably be requested by the Supplier, for the purposes of providing the Services;
 - 7.1.4 ensure such information and data as it provides to the Supplier is accurate and complete in all material respects;
 - 7.1.5 inform the Supplier of all health and safety rules and regulations and any other reasonable legal and security requirements that apply at any of the Client's premises;
 - 7.1.6 ensure that:
 - a. all the Client's Equipment is in good working order where applicable; and
 - b. Input Material is accurate and complete,and in each case are suitable for the purposes for which they are used in relation to the Services;
 - 7.1.7 obtain and maintain all necessary licences and consents as are required to enable the Supplier to use the



- Client's Equipment and Input Material in all cases before the date on which the Services are to start; and
- 7.1.8 keep and maintain the Deliverables and Supplier's Equipment in good condition and appropriate storage and shall not dispose of or use the same other than in accordance with the Supplier's written instructions or authorisation. The Client's use and possession of the Supplier's Equipment shall be at its own risk. Title to the Supplier's Equipment shall at all times remain with the Supplier.

- 7.2 The Client shall appoint a manager for the Services for each Schedule as identified in the Schedule ("Client's Manager"). That person shall have the authority to contractually bind the Client on matters relating to the Services.

8. CHANGE CONTROL

- 8.1 The Client's Manager and the Supplier's Manager shall discuss matters relating to the Services and Cyber security requirements on a monthly basis where feasible (or such other period as agreed in writing by the Parties).
- 8.2 If either Party wishes to change the scope or execution of the Services or cyber security requirements, it shall submit details of the requested change to the other in writing.
- 8.3 If either Party has made requests to make a change to the scope or execution of the Services or cyber security requirements, the Supplier shall, within a reasonable time (and in any event not more than 7 Business Days after receipt of the Client's request), provide a written estimate to the Client of:
- 8.3.1 the likely time required to implement the change;
 - 8.3.2 any necessary variations to the Supplier's Charges arising from the change; and
 - 8.3.3 any other impact of the change on this Agreement.
- 8.4 Unless both Parties consent to a proposed change, there shall be no change to this Agreement.
- 8.5 If both Parties consent to a proposed change, the change shall be made only after agreement of the necessary variations to the Services, the relevant Schedule, and any other relevant terms of this Agreement, in accordance with clause 21.
- 8.6 If the Supplier requests a change to the scope or execution of the Services or cyber security requirements as a result of:
- 8.6.1 any Relief Event (other than a Force Majeure Event);
 - 8.6.2 or in order to comply with any applicable safety or statutory requirements, and such changes do not materially affect the nature, scope of, or Charges for the Services,
- the Client shall not unreasonably withhold or delay consent to it. Unless the Supplier's request was attributable to a Relief Event or a change in legislation not reasonably predictable at the Effective Date or the Schedule Commencement Date, neither the Supplier's Charges nor any other terms of this Agreement shall vary as a result of such change.

9. CHARGES AND PAYMENT

- 9.1 In consideration of the provision of the Services by the Supplier, the Client shall pay the Charges in accordance with this clause 9.
- 9.2 The Charges shall be paid in British pounds, unless otherwise agreed in writing between the Parties.
- 9.3 The Client shall pay each invoice which is submitted to it by the Supplier, within 30 days of receipt, to a bank account specified in writing on the invoice supplied to the Client by the Supplier or to a bank account nominated in writing by the Supplier from time to time.
- 9.4 Without prejudice to any other right or remedy that the Supplier may have, if the Client fails to pay the Supplier any sum due under this Agreement on the due date:
- 9.4.1 the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.4.1 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%;
 - 9.4.2 and the Client fails to remedy such non-payment within seven days of the Supplier providing it with written notice to do so, the Supplier shall be entitled to suspend all or part of the Services until payment has been made in full; and
 - 9.4.3 and the Client fails to remedy such non-payment within 14 days of the Supplier suspending the Services, the Supplier shall be entitled to terminate this Agreement and any active Schedule.
- 9.5 In relation to payments disputed in good faith, interest under clause 9.4 is payable only after the dispute is resolved on sums found or agreed to be due, from the due date until payment. The Client must notify the Supplier if it disputes an invoice within 14 days of receipt of the invoice and must pay any non-disputed part of the invoice in accordance



with clause 9.3.

- 9.6 Invoices covering payment in respect of materials purchased by, or services provided to, the Supplier, or for reimbursement of expenses, shall be payable by the Client only if accompanied by relevant receipts and prior written approval was obtained from the Client.
- 9.7 Expenses shall be as per the Client guidelines which must be agreed by the Parties in writing in advance, or in the absence of such guidelines, as per the CND Subcontractor Expense Guidelines.
- 9.8 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services in its standard format, or as otherwise agreed in writing by the Parties. The Supplier shall allow the Client to inspect such records at all reasonable times on request provided the Client does so no more than once every three months, during the Supplier's normal working hours, and after having provided the Supplier with at least 30 days' prior written notice.
- 9.9 Where the Supplier's banking details have been provided incorrectly to the Client and should a payment be successful, the invoice will be considered paid, it is the Client's responsibility to recover the erroneous payment.
- 9.10 The Parties agree that the Supplier may review and increase the Charges provided that such Charges will not be increased more than once in any 12-month period. The Supplier will give the Client not less than 2 months' notice of any increase. If such increase is not acceptable to the Client, the Client may terminate this Agreement at the renewal point by giving notice in writing to the Supplier within 5 working days of such notice having been given or received.

10. QUALITY OF SERVICES

- 10.1 The Supplier warrants to the Client that:
 - 10.1.1 the Supplier will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the industry for similar services;
 - 10.1.2 the Services will materially conform with all descriptions and specifications provided to the Client by the Supplier, including in the relevant Schedule; and
 - 10.1.3 the Services and Deliverables will be provided in accordance with all applicable legislation from time to time in force.
- 10.2 To the maximum extent permitted by law, all implied terms, conditions, and warranties (including any implied by statute, common law, or otherwise) are hereby excluded from this Agreement.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 As between the Parties, the Supplier shall retain ownership of all Intellectual Property Rights in Pre-existing Materials and (unless otherwise agreed in a Schedule) the client shall retain ownership of all Intellectual Property Rights in Input Materials and the Deliverables.
- 11.2 Nothing in this Agreement is intended to transfer any title, right or interest in any Intellectual Property Rights pertaining to Supplier Pre-existing Materials to the Client.
- 11.3 The Supplier grants the Client or shall procure the direct grant to the Client of, a limited, non-exclusive, licence during the term of the relevant Schedule to use Supplier Pre-existing Materials for the purpose of receiving and using the Services and the Deliverables for its own internal purposes.
- 11.4 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 11.3.
- 11.5 In relation to the Client's Equipment and the Input Material, the Client:
 - 11.5.1 and its licensors shall retain ownership of all title and Intellectual Property Rights in the Client's Equipment and the Input Material; and
 - 11.5.2 grants the Supplier a fully paid-up, non-exclusive, royalty-free, licence to use, copy and modify the Client's Equipment and the Input Material for the term of this Agreement solely for the purpose of providing the Services to the Client.
- 11.6 **The Supplier:**
 - 11.6.1 warrants that the receipt and use of the Services and the Deliverables by the Client shall not infringe the rights, including any Intellectual Property Rights, of any third parties to the extent that infringement results from copying;
 - 11.6.2 shall, subject to clause 16 (Limitation of liability), indemnify the Client in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other reasonable professional costs and expenses) suffered or incurred by the Client arising out of or in connection with any claim brought against the Client for



actual or alleged infringement of a third party's Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables; and

11.6.3 shall not be in breach of the warranty at clause 11.6.1, and the Client shall have no claim under the indemnity at clause 11.6.2, to the extent the infringement solely arises from:

- a. the use of the Client's Equipment and/or the Input Material in the development of, or the inclusion of the Client's Equipment and the Input Material in, any Deliverable;
- b. any unauthorised modification of the Pre-existing Materials, Deliverables or Services, other than by or on behalf of the Supplier or as anticipated to fulfil the purpose of the Service; and
- c. compliance with the Client's specifications or instructions unless reasonably deemed necessary for the purpose of implementing this Agreement.

11.7 The Client:

11.7.1 warrants that the receipt and use of the Client's Equipment and the Input Material in the performance of this Agreement by the Supplier, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and

11.7.2 shall indemnify the Supplier in full against all liabilities, costs, expenses, damages and losses (including 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 reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Agreement of the Client's Equipment and the Input Material.

11.8 If either Party (the "**Indemnifying Party**") is required to indemnify the other Party (the "**Indemnified Party**") under this clause 11, the Indemnified Party shall:

11.8.1 notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 11.6.2 or clause 11.7.2 (as applicable) ("**IPRs Claim**");

11.8.2 allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;

11.8.3 provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and

11.8.4 not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

11.9 Unless reasonably deemed necessary for the purpose of implementing this Agreement, the Client shall not:

11.9.1 (i) attempt to copy, reproduce, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Pre-existing Materials, Deliverables or Supplier's Equipment (together the "**Supplier Property**") in any form or media or by any means except as anticipated to fulfil the purpose of the Services; or

(ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Supplier Property unless expressly permitted by applicable law; or

11.9.2 access all or any part of the Supplier Property in order to build a product or service which competes with the Supplier Property; or

11.9.3 use the Supplier Property to provide services to third parties or offer any part of the Supplier Property for sale or distribution over any other medium; or

11.9.4 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Supplier Property available to anyone; or

11.9.5 attempt to obtain, or assist third parties in obtaining, access to the Supplier Property; or

11.9.6 permit any third party to benefit from the use or functionality of the Supplier Property.

12. INSURANCE

12.1 During the term of this Agreement the Supplier shall maintain in force, with a reputable insurance company,



professional indemnity insurance in an amount not less than £2,000,000 and shall, on the Client's request, produce the insurance certificate giving details of cover for the current year.

- 12.2 The Supplier shall at the request of the Client from time to time, furnish such evidence as the Client may reasonably request to demonstrate that such insurance cover has been maintained in force with such insurer and not breached and provide copies of any policy documentation requested by the Client.
- 12.3 The Supplier shall not do anything to invalidate any insurance policy or to prejudice the Client's entitlement under it and shall notify the Client if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.
- 12.4 The Supplier's liabilities under this Agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause 12.1.
- 12.5 The provisions of this clause shall survive termination of this Agreement for a period of 12 months, however arising.

13. DATA PROTECTION

- 13.1 The Supplier may process Personal Data as the Processor on behalf of the Client (being the Controller). The scope, nature and purpose of processing by the Supplier shall be the processing of Personal Data entirely incidental and pursuant to the provision of the Services to the Client, for the term of this Agreement. The types of Personal Data and categories of Data Subject shall vary depending on the Services being provided.
- 13.2 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13.2 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.
- 13.3 Without prejudice to the generality of clause 13.2, the Client 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/or lawful collection of the Personal Data by the Supplier on behalf of the Client for the duration and purposes of this Agreement.
- 13.4 Without prejudice to the generality of clause 13.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Agreement:
 - 13.4.1 process that Personal Data only on the documented written instructions of the Client unless the Supplier is required by applicable law to otherwise process that Personal Data. Where the Supplier is relying on applicable law as the basis for processing Personal Data, the Supplier shall promptly notify the Client of this before performing the processing required by the applicable law unless the applicable law prohibits the Supplier from so notifying the Client;
 - 13.4.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;
 - 13.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - 13.4.4 not transfer any Personal Data outside of the UK or EEA unless the prior written consent of the Client has been obtained;
 - 13.4.5 assist the Client, at the Client's cost, 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;
 - 13.4.6 notify the Client without undue delay on becoming aware of a Personal Data Breach;
 - 13.4.7 at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the Agreement unless required by applicable law to store the Personal Data; and
 - 13.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 13 and allow for audits by the Client or the Client's designated auditor and immediately inform the Client if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation. The Client shall only be entitled to carry out an audit once every 12 months, during the Supplier's normal working hours, and following provision by the Client to the Supplier of at least 30 days' prior written notice. The Client will bear the costs of any such audit.
- 13.5 The Client hereby provides its prior, general authorisation for the Supplier to appoint processors to process the Personal Data, provided that the Supplier:
 - 13.5.1 shall ensure that the terms on which it appoints such processors comply with Data Protection Legislation, and are consistent with the obligations imposed on the Supplier in this clause 13;



- 13.5.2 shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
- 13.5.3 shall inform the Client of any intended changes concerning the addition or replacement of the processors, thereby giving the Client the opportunity to object to such changes provided that if the Client objects to the changes and can demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Data Protection Legislation, the Client's sole and exclusive remedy shall be to terminate the affected part of this Agreement and receive a pro-rata refund for any pre-paid Charges relating to the period after termination of that part of the Agreement.

14. CONFIDENTIALITY

- 14.1 Each Party undertakes that it shall not at any time during this Agreement, and for a period of 3 years after termination of this Agreement, disclose to any person any Confidential Information of the other Party, except as is permitted by clause 14.2.
- 14.2 Each Party may disclose Confidential Information:
 - 14.2.1 to its employees, agents, consultants or subcontractors as need-to-know such information for the purpose of discharging its obligations under this Agreement. The Party in receipt of such information shall ensure that its employees, agents, consultants or subcontractors to whom it discloses the Confidential Information comply with this clause 14; and
 - 14.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3 Neither Party shall use the other Party's Confidential Information for any purpose other than to perform its obligations under this Agreement.
- 14.4 This clause 14 shall survive the termination of this Agreement, however arising.
- 14.5 Both Parties shall ensure that they have adequate security measures and control processes in place to protect any Confidential Information that has been disclosed.

15. ANTI-BRIBERY

- 15.1 Each Party shall:
 - 15.1.1 comply with all applicable laws, statutes, regulations and codes relating to antibribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");
 - 15.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 15.1.3 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 15.1.2, and will enforce them where appropriate;
 - 15.1.4 report to the other Party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this Agreement;
- 15.2 By signing this Agreement, both parties confirm compliance with this clause 15 and guarantee that any non-compliance with this clause 15 will be notified to the other party, in writing, within 1 month of the non-compliance event and will detail the steps being taken by the notifying party to rectify said non-compliance.
- 15.3 Each Party shall ensure that any staff or subcontractors who are performing services in connection with this Agreement do so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Parties in this clause 15. The Party engaging the staff or subcontractors shall be responsible for the observance and performance by such persons of the terms herein and shall be directly liable to the other Party for any breach by such persons of any of the associated terms of engagement.

16. LIMITATION OF LIABILITY

- 16.1 Nothing in this Agreement excludes the liability of each Party which cannot legally be limited, including liability for death or personal injury caused by its negligence; for fraud or fraudulent misrepresentation; or breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 16.2 Subject to clause 16.1, neither Party's total aggregate liability to the other in any 12-month period of the term of a Schedule starting on the Schedule Commencement Date or any anniversary of it (each a "**Schedule Year**"), arising in connection with the performance or contemplated performance of the Services under that Schedule shall in any



circumstances exceed 200% of the total Charges paid and payable by the Client to the Supplier under that Schedule in that Schedule Year. This limit shall apply howsoever that liability arises including, without limitation, a liability arising by breach of contract, arising by tort, (including, without limitation, the tort of negligence) or arising by breach of statutory duty.

16.3 Subject to clause 16.1, neither Party shall be liable to the other, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:

- 16.3.1 loss of profit; or
- 16.3.2 loss of goodwill; or
- 16.3.3 loss of business or business opportunity; or
- 16.3.4 loss of anticipated saving; or
- 16.3.5 loss or corruption of data or information; or
- 16.3.6 special, indirect or consequential damage or loss suffered by the other Party that arises under or in connection with this Agreement.

17. TERMINATION

17.1 Without affecting any other right or remedy available to it, either Party may terminate this Agreement and/or any individual Schedule with immediate effect by giving written notice to the other Party if:

- 17.1.1 the other party fails to pay any undisputed amount due under this agreement on the due date for payment and remains in default for more than 60 days after being notified in writing to make such payment;
- 17.1.2 the other Party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 17.1.3 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;
- 17.1.4 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 any relevant legislation;
- 17.1.5 the other Party has a receiver or administrative receiver appointed over it or over any part of its business or assets or passes a resolution for winding up (except for the purposes of a genuine scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, or becomes subject to an administration order or enters into any voluntary arrangement with its creditors, or it ceases or threatens to cease or carry on business; or
- 17.1.6 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.
- 17.1.7 the other Party undergoes a Change of Control, provided that:
 - (1) the terminating Party provides at least 28 days' prior written notice of its intention to terminate this Agreement, unless the contract is subscription-based in which case it would continue for the full duration of the subscription; and
 - (2) where the Client is the terminating Party, it must reasonably demonstrate that the Change of Control will result in a material reduction in the Supplier's ability to perform the Services provided under this Agreement.

18. CONSEQUENCES OF TERMINATION

18.1 On termination of this Agreement or any individual Schedule:

- 18.1.1 for any reason, the Supplier shall immediately deliver to the Client all Client Equipment, Input Material and all copies of information and data provided by the Client to the Supplier, prepared by the Supplier, or obtained by the Supplier for the purposes of this Agreement (or if applicable the relevant Schedule). The Supplier shall certify to the Client that it has not retained any copies of Client Equipment, Input Material or other information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in clause 14; and
- 18.1.2 other than in the event of a termination by the Supplier for cause, the Supplier shall provide a refund of any Charges paid in advance for the Services which have not been received by the Client as a result of the



termination of the Agreement or relevant Schedule.

18.2 On termination of this Agreement or any individual Schedule for any reason:

18.2.1 the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and, in respect of the Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;

18.2.2 the Client shall return all of the Pre-existing Materials, Supplier's Equipment and Deliverables (except for those Deliverables which a Schedule states are to be retained by the Client); and

18.2.3 all licences granted by the Supplier to the Client under this Agreement shall immediately terminate.

18.3 Termination of any individual Schedule shall not affect any other Schedule or this Agreement as a whole, which shall continue accordingly unless otherwise terminated in accordance with this Agreement.

18.4 Both Parties shall return, destroy or otherwise deal with any Confidential Information as the disclosing Party shall instruct.

18.5 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

19. FORCE MAJEURE

19.1 "Force Majeure Event" includes any circumstance not within a Party's reasonable control including, without limitation: acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; collapse of buildings, fire, explosion or accident; and interruption or failure of utility service.

19.2 Provided it has complied with clause 19.4, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event ("Affected Party"), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

19.3 The corresponding obligations of the other Party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

19.4 The Affected Party shall: as soon as reasonably practicable after the start of the Force Majeure Event but no later than 5 Business Days from its start, notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

19.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 30 days, the Party not affected by the Force Majeure Event may terminate any affected Schedule by giving 14 days written notice to the Affected Party.

19.6 If the Force Majeure Event prevails for a continuous period of more than 2 months, either Party may terminate any affected Schedule by giving 14 days' written notice to the other Party. On the expiry of this notice period, the relevant Schedules will terminate. Such termination shall be without prejudice to the rights of the Parties in respect of any breach of this Agreement occurring prior to such termination.

20. ASSIGNMENT AND OTHER DEALINGS

20.1 Neither Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the other Party's prior written consent (not to be unreasonably withheld or delayed).

21. VARIATION

21.1 Subject to clause 8, no variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).



22. WAIVER

- 22.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 22.2 A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

23. SEVERANCE

- 23.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 23.2 If one Party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

24. ENTIRE AGREEMENT

- 24.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 24.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 24.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

25. NO PARTNERSHIP OR AGENCY

- 25.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.
- 25.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

26. THIRD PARTY RIGHTS

- 26.1 No one other than a Party to this Agreement shall have any right to enforce any of its terms.

27. NOTICES

- 27.1 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 first-class post or other next working day delivery service at its registered office.
- 27.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt; if sent by pre-paid first-class post or other next working day delivery service, at 9.00am on the second Business Day after posting or at the time recorded by the delivery service.
- 27.3 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.

28. COUNTERPARTS

- 28.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.



29. DISPUTE RESOLUTION

- 29.1 The Parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between senior executives of the Parties, who have authority to settle the same.
- 29.2 If the matter is not resolved by negotiation within 30 days of receipt of a written 'invitation to negotiate', the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing ("**ADR notice**") to the other Party to the dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 21 days after the date of the ADR notice.
- 29.3 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the dispute under Clause 30 which shall apply at all times.

30. GOVERNING LAW AND JURISDICTION

- 30.1 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.
- 30.2 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).
- 30.3 Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be governed by and construed in accordance with the courts of England and Wales.