

# **St. Vincent's Consulting Limited**

## **Terms and Conditions**

THIS AGREEMENT ENTERED INTO ON DAY OF XXXXXXXXXXXX

**BETWEEN**

- (1) **St. Vincent's Consulting Limited**, a company registered in Scotland and (with Company Number SC206650) and having its registered office at First Floor, 13-14 Park Place, Leeds, West Yorkshire, LS1 2SJ (the "**Supplier**"); and
- (2) XXXXXXXXXXXXXXXXXXXX (the "**Client**") whose registered office is at XXXXXXXXXXXX.

**WHEREAS**

- (A) The **Supplier** is a specialist provider of consultancy, implementation and software development services to the healthcare market as more particularly described in this agreement ("**Agreement**").
- (B) The **Client** wishes to obtain from the Supplier and the Supplier wishes to provide to the Client certain agreed services pertaining to the development and maintenance of applications and IT services.
- (C) This Agreement sets out the process by which the **Client** has appointed the **Supplier** to provide the **Services** (as defined below) pursuant to mutually agreed **Statement of Work** (as defined below) and the terms and conditions that will apply to the supply of the **Services**.

IT IS AGREED as follows:

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following terms shall have the following meanings:

**Additional Terms** means additional terms which are specific to **Services** as set out in a **SoW**;

**Alternative Dispute Resolution Notice** has the meaning given in Clause 28.2;

**Applicable Law** means the law of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the **Services**;

**Bespoke Software** means software which is created and developed by the Supplier exclusively for the requirements of the Client under the Contract and which software is not a modification of the Software or otherwise contains any element of the Software;

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

**Change** means any change to the Contract including to any of the **Services**;

**Change Control Note** means the written record of a **Change** agreed or to be agreed by the parties pursuant to the **Change Control Procedure**, such record being in the form set out in Schedule 2;

**Change Control Procedure** means the procedure set out in Schedule 2;

**Charges** means the charges payable in consideration for the Product and **Services** to be supplied under a **SoW** as such charges are set out in the relevant **SoW**;

**Client Data** means all data provided to **the Supplier** or any **the Supplier Affiliate** or any **the Supplier Personnel** by or on behalf of **the Client** in connection with the provision of the **Services**, and includes **the Client's Personal Data**;

**Client's Equipment** means any equipment, systems, cabling or facilities provided by **The Client** and used directly or indirectly in the supply of the **Services**;

**Client's Group** means **The Client**, its ultimate holding company and all subsidiaries of its ultimate holding company;

**Client Specific Obligations** means any requirements or responsibilities attributed to **The Client** as stated in the **SoW**

**Commencement Date** means the date on which the **Services** under a **SoW** are to commence, being either the date of signature of the relevant **SoW** by **The Supplier** or a specific date as detailed in the relevant **SoW**;

**Commercially Sensitive Information** means information comprising of a commercially sensitive nature relating to either party, its intellectual property rights or its business or that, if disclosed, would cause either party significant commercial disadvantage or material financial loss.

**Confidential Information** means all confidential information (however recorded, preserved or disclosed) disclosed by a party or its employees, officers, representatives or advisers to the other party and that party's representatives including but not limited to:

- a) information which is identified as confidential;
- b) any information that would be regarded as confidential by a reasonable business person relating to:
  - (i) the business, affairs, clients, suppliers, or plans of the **Disclosing Party**; and
  - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the **Disclosing Party**;
- c) the terms of this Agreement;
- d) Client or staff Data;

- e) any information relating to any Intellectual Property Rights owned by either party; but not including any information that:
- f) is or becomes generally available to the public other than as a result of its disclosure by the **Recipient** or its Representatives in breach of this **Agreement** or of any other undertaking of confidentiality addressed to the party to whom the information relates (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information); or
- g) was available to the **Recipient** on a non-confidential basis prior to disclosure by the **Disclosing Party**; or
- (i) was lawfully in the possession of the **Recipient** before the information was disclosed to it by the **Disclosing Party**; or
- h) the parties agree in writing is not confidential or may be disclosed;

**Contract** means the contract between the Supplier and the Client for the supply of Services which consists of the Agreement, the relevant **SoW** entered into pursuant to the Agreement and any documents incorporated by reference;

**Data Controller** has the meaning set out in the Data Protection Legislation;

**Data Processor** has the meaning set out in the Data Protection Legislation;

**Data Protection Legislation** the DPA; the Data Protection Directive (95/46/EC); the Electronic Communications Data Protection Directive (2002/58/EC); the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003); the GDPR and / or any applicable legislation adopted by the United Kingdom post the United Kingdom ceasing to be a Member State of the European Union (whichever is in force at the time of the Agreement); and all applicable laws and regulations relating to the processing of the personal data and privacy, including where applicable the guidance and codes of practice issued by the UK Information Commissioner's Office; and any statutory modification or re-enactment thereof and any applicable codes of conduct;

**Data Subject** has the meaning set out in the Data Protection Legislation;

**Default** means any material breach of the obligations of either party, or any default, act, omission, negligence or misrepresentation of either party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of this **Agreement**;

**Deliverables:** the deliverables (including any and all deliverables to be supplied pursuant to the Project Milestones) specified in the **SoW**.

**Disclosing Party** means a party to this Agreement which discloses or makes available **Confidential Information** to the other party;

**Dispute** has the meaning given in Clause 28;

**Document** means 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;

**DPA** means the Data Protection Act 2018;

**GDPR** means the General Data Protection Regulation (Regulation (EU) 2016/679);

**Effective Date** means the date of this Agreement;

**Environmental Information Regulations** means **Environmental Information Regulations** 2004 (EIR) (SI 2004 No. 3391);

**Force Majeure Event** has the meaning given in Clause 18.1;

**FOIA** means the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

**Good Industry Practice** means the exercise of such skill and knowledge that would reasonably be expected from a person engaged in that business in similar circumstances;

**Information:** as per the meaning given under section 84 of the FOIA.

**Input Material** means all Documents, information, items and materials in any form (whether owned by the client or a third party), which are provided by the Client to the Supplier in connection with the **Services**, including computer programs, data, reports and specifications including the items provided pursuant to Clause 5.1 (e);

**Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in any territory including patents, designs and algorithms; rights in inventions; copyright and related rights; moral rights; database rights; rights in designs; semi-conductor topography rights; trade marks; business and domain names; rights in goodwill or to sue for passing off; trade secrets and any other intellectual property rights of any other kind or nature, howsoever designated, whether arising by operation of law, contract, licence or otherwise and whether registered or unregistered and all applications (and rights to apply) for, and for renewals and extensions of, any such rights as may now or in the future exist anywhere in the world;

**Invoice Date** means the date on which any invoice will be rendered, as specified in a **SoW**;

**Key Personnel** shall mean **the Supplier Personnel** appointed to perform the **Services** who are from time to time identified as key personnel in the **SoW**;

**Non-Supplier Fault Event** means:

- i) any act or omission of the Client or any third-party supplier to The Client and in respect of which **the Client** is responsible, but excluding any sub-contractors appointed by **the Supplier** for the provision of the **Services**;
- j) the occurrence of a **Force Majeure Event**;
- k) any change in **the Client's** requirements other than agreed by way of a **Change**;
- l) any material defects associated with **the Client's** selected third-party products, software and/or services which **the Client** requires **the Supplier** to include within the **Services**, other than agreed by way of a **Change**;
- m) where inaccurate or incomplete information, data or documentation has been provided to **the Supplier** by **the Client** and contributes to a **Default**, subject to it not being immaterial in nature; or
- n) a **Default** by **the Client**;

**Performance Levels** means the standards of service or service objectives or project milestones as specified in any **SoW**, which **the Supplier** will be expected to achieve, as a minimum requirement, in the performance of the relevant **Services**;

**Personal Data** has the meaning set out in the Data Protection Legislation;

**Pre-existing Materials** means all Documents, information and materials provided by **the Supplier** relating to the **Services** which existed prior to the **Commencement Date** of the relevant **SoW**, including computer programs, data, reports and specifications;

**Project Milestones**: the date(s) specified as such, as set out in the **Project Plan**.

**Project**: means the Services to be provided by the Supplier to the Client as described in the **SoW**.

**Recipient** means a party to this **Agreement** which receives or obtains **Confidential Information** from the other party;

**Representation** has the meaning given in Clause 23.2;

**Requests for Information**: means a request for information or an apparent request FOIA or the Environmental Information Regulations;

**Services** means the services to be provided by **the Supplier** under this **Agreement** as set out in the relevant **SoW**, together with any other services which **the Supplier** agrees in writing to provide to **The Client**;

**Services Support Charge** means the charges for individual services provided by **The Supplier** under this **Agreement** as set out in the **SoW**;

**Software** means the computer software program or programs, or any portion of such program or programs, together with all related materials, documentation and information, or any portion thereof and any modifications, corrections, improvements, enhancements, updates and upgrades thereto, tangible or intangible, which are to be licensed by the Supplier to **the Client** as part of **the Services**, and which excludes **Third Party Software** and **Bespoke Software**;

**Statement of Work** means the plan for each Project, agreed in accordance with Clause 3, describing the Services to be provided by the Supplier to the Client (and any Additional Terms), the Deliverables, the timetable for performance and the related matters including those set out in the form attached at Schedule 1;

**Supplier Affiliate** means (i) **The Supplier** and any entity which from time to time is **The Supplier's** ultimate holding company or a subsidiary of such ultimate holding company or of **The Supplier** and (ii) any entity over which from time to time any of the entities defined in (i) either directly or indirectly exercises management control, even though it may own less than fifty percent (50%) of the shares and is prevented by law from owning a greater shareholding;

**Supplier Equipment** means any equipment, including tools, systems, cabling or facilities, provided by **The Supplier** or its sub-contractor 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**;

**Supplier Personnel** means all employees, agents, consultants, Sub-contractors and other representatives of **The Supplier** (or any **Supplier Affiliate** or any of their respective sub-contractors) who are involved, or proposed to be involved, in the provision of the **Services**;

**Term** has the meaning given in Clause 2.1;

**Third Party Software** means any software supplied by **The Supplier** to **The Client** as part of the **Services** which is not owned by **The Supplier** or a **Supplier Affiliate**;

**VAT** means value added tax chargeable under English law for the time being and any similar additional tax; and

1.2 The interpretation and construction of this Agreement shall be subject to the following rules, except where the context makes it clear that a rule is not intended to apply:

- a) reference to legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

- b) reference to a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- c) reference to a party to the Agreement includes its legal successors and permitted assignees;
- d) a singular word includes the plural, and vice versa;
- e) a word which suggests one gender includes the other genders;
- f) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- g) the words “subsidiary” and “holding company” have the meanings set out in section 1159 of the Companies Act 2006 and “management control” shall be demonstrated by the ability to exercise significant influence over an entity or its management;
- h) the headings in this Agreement are for reference purposes only and shall not affect the interpretation or construction of this Agreement;
- i) subject to Clause 1.2 (j), in the event of conflict between the provisions of this Agreement and the relevant SoW, the terms of the SOW shall prevail.
- (j) in the event of a conflict or inconsistency between the definitions in a **SoW** and the definitions set out in Clause 1.1 of this Agreement, then the definitions in this **Agreement** shall prevail;
- (k) a reference to:
  - (i) a **Clause** is a reference to the clause that bears the relevant number in the body of this **Agreement**; and
  - (ii) a Schedule is a reference to the relevant schedule to this Agreement
- (l) **The Supplier's** rights under this **Agreement** may also be exercised by other **Supplier Affiliates** and where **the Supplier** has any obligation under this **Agreement**, performance of that obligation (in whole or in part) by any other **Supplier Affiliate** shall be deemed (to the same extent) to be performance by **the Supplier**.

## 2. COMMENCEMENT AND TERM

- 2.1 This Agreement is a framework agreement which shall commence on the Effective Date **11<sup>th</sup> March 2020** and shall continue in full force and effect unless and until it is terminated in accordance with Clause 17 (the “Term”).

### **3. SERVICES / STATEMENT OF WORK**

- 3.1 The Services to be supplied by the Supplier to the Client for each Project shall be as set out in the relevant SoW. Each SOW shall be agreed in the following manner:
- 3.1.1 the Client shall ask the Supplier to provide a draft SoW for each Project, providing the Supplier with as much information as the Supplier reasonably requests in order to prepare a draft SoW as requested;
  - 3.1.2 following receipt of the information requested from the Client, the Supplier shall, as soon as reasonably practicable either:
    - (a) inform the Client that it declines to provide the requested services; or
    - (b) provide the Client with a draft SoW.
  - 3.1.3 if the Supplier provides the Client with a draft SoW pursuant to Clause 3.1.2 (b), the Supplier and the Customer shall discuss and agree the draft SoW; and
  - 3.1.4 both parties shall sign the SoW when it is agreed.
- 3.2 Once a SoW has been agreed and signed in accordance with Clause 3.1.4, no amendment shall be made to it except in accordance with Clauses 7 and 19 of this Agreement.
- 3.3 If, at any time, **the Supplier** becomes aware that it will not (or is unlikely to) achieve any **Deliverable** by the **Project Milestone** for such **Deliverable** it shall notify **the Client** of the fact of the delay immediately via email or telephone to key personnel set out within the SoW and summarise the reasons for it.
- 3.4 **The Supplier** shall as soon as possible, and in any event not later than five (5) Business Days after the initial notification pursuant to clause 3.3 provide **the Client** full details in writing of:
- (a) the reasons for such delay;
  - (b) the consequences of such delay; and
  - (c) if **the Supplier** claims that such delay is due to **the Client**, the reason for making that claim.

3.5 **The Supplier** shall use **reasonable endeavours** to deploy all additional resources, and take all reasonable steps to eliminate or mitigate the consequences of such delay to **The Client**.

3.6 Any disputes about or arising out of such delays shall be resolved through the dispute resolution procedure set out in clause 28 (Dispute Resolution). Pending the resolution of the dispute both parties shall continue to work to resolve the causes of, and mitigate the effects of, such delay.

#### 4. THE SUPPLIER'S OBLIGATIONS

4.1 **The Supplier** shall use reasonable endeavours to perform the **Services** in accordance with the terms of the **Contract**.

4.2 In providing the **Services** the **Supplier** shall at all times provide the **Services** in accordance with all **Applicable Laws**.

4.3 The Supplier shall use reasonable endeavours to:

- (a) comply with any specific obligations on **the Supplier** set out in the relevant **SoW**;
- (b) allocate sufficient resources to provide the **Services** in accordance with the terms of the **SoW**; and
- (c) ensure that any of **the Supplier Personnel** who are engaged in the provision of any of the **Services** shall:
  - (i) comply with all applicable health, safety, security and other office procedures, rules and regulations notified to **the Supplier** by **the Client** from time to time, provided that **the Supplier** shall not be liable under the Contract if, as a result of such compliance, it is in breach of any of its obligations under the Contract;
  - (ii) be appropriately qualified and experienced to undertake their tasks; and
  - (iii) comply at all times with the obligations of confidentiality and data protection set out in this **Agreement and applicable national legislation**.

4.4 Where the **Services** involve the supply of **Third Party Software**, the **Supplier** shall notify **the Client** of the licence terms and conditions applicable to **the Client's** use of such **Third-Party Software** and the Client shall comply with such terms and conditions of use.

4.5 **The Supplier** shall co-operate and use **reasonable endeavours** to procure that each of its authorised sub-contractors co-operates, with **the Client** and any third party specified in the **SoW** and engaged by **the Client** to provide related **services to the Client**, so as to

integrate (where reasonably requested by the **Client**) other **services**, materials or equipment supplied by **the Client** or any third party with the **Services**.

- 4.6 The co-operation referred to in Clause 4.5 shall only apply where the need to integrate any Client or third-party **services** is set out clearly in the **SoW** and the costs of such co-operation shall be charged by **the Supplier** in accordance with the terms of the relevant **SoW**.
- 4.7 **The Supplier** shall maintain throughout the duration of each **SoW** adequate and reasonable insurance cover with a reputable insurer in relation to **the Supplier's** risks under such **SoW**. **The Supplier** shall, at **the Client's** request 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.
- 4.8 **The Supplier** shall provide personal computing equipment for the use of its staff in the performance of this **Agreement**.
- 4.9 **The Supplier** is not obligated to provide the **Services** on **the Client's** premises where they may reasonably be performed elsewhere. However, where and when appropriate, the services would be carried out on the premises.
- 4.10 **The Supplier** shall be free to appoint, replace and substitute its personnel for the performance of the **Services** without objection by **the Client**. In the case of key personnel this will be done in consultation with the Client.

## 5. THE CLIENT'S OBLIGATIONS

- 5.1 **The Client** shall:
- (a) co-operate with **the Supplier** in all matters relating to the **Services**;
  - (b) comply with all dependencies and **Client Specific Obligations** on **the Client** as set out in the relevant **SoW**;
  - (c) comply with all licence terms and conditions applicable to any **Third-Party Software**, as notified to **the Client** by **the Supplier**;
  - (d) provide, for **the Supplier**, its agents, sub-contractors, consultants and employees, in a timely manner and at no charge, access to **the Client's** premises, office accommodation, data and other facilities as reasonably required by **the Supplier**;
  - (e) provide to the Supplier, in a timely manner, all documents, information and materials in any form (whether owned by the Client or a third party) required under a **SOW** or otherwise reasonably required by the Supplier in connection with the **Services** and ensure that they are accurate in all material respects;

- (f) inform **The Supplier** of all relevant health and safety rules and regulations and any other reasonable security requirements that apply at any of **The Client's** premises;
  - (g) ensure that all **The Client's Equipment** is in good working order and suitable for the purposes for which it is used in relation to the **Services** and conforms to all relevant United Kingdom standards or requirements;
  - (h) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the use of **Input Material** in all cases before the date on which the **Services** are to start;
  - (i) make available to **The Supplier** and **The Supplier Personnel** such access to staff of **The Client** who are familiar with **The Client's** systems and equipment and software as **The Supplier** may reasonably require in connection with the supply of the **Services**; and
  - (j) take all reasonable precautions to protect the health and safety of **The Supplier Personnel** whilst **The Supplier Personnel** are at **The Client's** premises.
  - (k) supply the **Supplier Personnel** with personal computing equipment where **The Client** has determined that this is preferable for reasons of security and compliance with NHS regulations regarding access to systems holding personal data.
- 5.2 **The Client** is responsible for data cleaning, for the integrity of any data, including **Input Material**, provided to **The Supplier** and for all direct and in-direct consequences of any errors in such data or **Input Material**. The Supplier shall report to the Client any data integrity issues it identifies in respect of Client provided data.
- 5.3 **The Client** shall obtain all required licences or other consents and comply with Applicable Laws as required to enable **The Supplier** to provide the **Services**, including in relation to Supplier's access to the Client's premises, the installation of the Supplier's Equipment, the use of all Input Materials by the Supplier and the use of the Client's Equipment and is solely responsible for any costs associated with obtaining such licences and consents.

## 6. CHARGES

- 6.1 The **Charges** payable by **the Client** to **the Supplier** in respect of the **Services** provided under any **SoW** shall be as set out in the relevant **SoW**.
- 6.2 All **Charges** are expressed exclusive of Value Added Tax or other applicable or equivalent taxes. **The Client** will be responsible for paying Value Added Tax and other applicable or equivalent taxes. Such taxes will be included at the applicable rate at time of invoice in all invoices submitted by **the Supplier**.

- 6.3 Unless otherwise stated in the relevant **SoW**, **the Supplier** shall submit invoices to **the Client** in respect of the **Services**, payable within 30 days from the date of the invoice, and in respect of, on delivery.
- 6.4 **The Client** shall pay each undisputed invoice submitted to it by **The Supplier** in full (without any set off, deduction or withholding whatsoever) and in cleared funds, within 30 days of the date of the invoice. Payment shall be made by **The Client** by the method specified in the **SoW** or by a mutually agreed method.
- 6.5 All **Charges** shall be expressed, invoiced and payable in pounds' sterling. Unless otherwise stated in any **SoW** all invoices shall be in **The Supplier's** standard form and shall constitute valid VAT invoices.
- 6.6 Without prejudice to any other right or remedy that it may have, if **The Client** fails to pay an agreed invoice **The Supplier** on the due date, **The Supplier** may:
- (a) suspend all **Services** until payment has been made in full (and for the avoidance of doubt, such suspension shall be at no cost or penalty to **The Supplier**).
- 6.8 **The Supplier** may, without prejudice to any other rights it may have, set off any liability of **The Client** to **The Supplier** against any liability of **The Supplier** to **The Client**.
- 6.9 If **The Client** receives an invoice which it reasonably believes includes a sum which is not valid and properly due:
- (a) **The Client** shall notify **The Supplier** in writing as soon as reasonably practicable;
  - (b) **The Client's** failure to pay the disputed **Charges** shall not be deemed to be a breach of this **Agreement**;
  - (c) **The Client** shall raise a credit note, which will be sent by **The Supplier** for the disputed invoice and a new invoice will be raised with the amount that is not in dispute
  - (d) once the dispute has been resolved, where either party is required to make a balancing payment (or **The Supplier** is required to issue a credit note), it shall do so within 30 days.

## 7. CHANGE CONTROL

- 7.1 Where **the Client** or **the Supplier** see a need to make a **Change** to this **Agreement** or any **SoW**, **the Client** may at any time request, and **the Supplier** may at any time recommend, such **Change** only in accordance with the **Change Control Procedure** (Schedule 2).
- 7.2 Neither party shall unreasonably withhold its agreement to any **Change**.

- 7.3 Until such time as a **Change** is made in accordance with the **Change Control Procedure**, the obligations of the parties under this **Agreement** or any **SoW** shall not be affected and **the Client** and **the Supplier** shall, unless otherwise agreed in writing, continue to perform this **Agreement** and any **Services** in any **SoW** in compliance with its terms as if the request for the **Change** had not been made.
- 7.4 Any discussions which may take place between **the Client** and **the Supplier** in connection with a request or recommendation before the authorisation of a resultant **Change** shall be without prejudice to the rights of either party or the terms of this **Agreement**.

## 8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 As between the Client, the Supplier and any Supplier Affiliate, the Client acknowledges that (i) all Intellectual Property Rights and all other rights in the Services, the Pre-existing Materials and any Software are owned by the Supplier or the relevant Supplier Affiliate absolutely and (ii) the Third-Party Software is and shall continue to be owned by the relevant third party licensor of such software. Subject to Clause 8.2, the Supplier hereby licenses all such rights other than the Third-Party Software to the Client on a non-exclusive, royalty-free, non-transferable basis to such extent as is necessary to enable the Client to make reasonable use of the Services in accordance with the terms of the Contract. If this Agreement is terminated for whatever reason, this licence will automatically terminate.
- 8.2 The Client acknowledges that (i) its use of any Third-Party Software is conditional on compliance with the licence terms and conditions applicable to such software, as notified to the Client by the Supplier and (ii) it shall not acquire any right, title or interest in or to any Third-Party Software other than the right to use such software.
- 9.3 The Client will not copy, decompile or modify any Software without the Supplier's prior written consent (except as permitted by law) and will not distribute or disclose the Software to any third party other than as expressly permitted in the applicable SoW.
- 8.4 Any and all **Intellectual Property Rights** created as part of the **Services** that are deemed to be Bespoke Software will vest in **the Client** absolutely.
- 8.5 If and to the extent that the Supplier, the Supplier Affiliates and/or the Supplier Personnel are required to use the Input Materials for the purposes of providing the Services, the Client hereby grants to the Supplier and / or shall procure the grant to the Supplier by the relevant third party of a non-exclusive, royalty-free, non-transferable licence to use such Input Materials to the extent necessary to enable the Supplier

Personnel to provide the Services in accordance with the terms of the Agreement. If the Agreement is terminated for whatever reason, this licence will automatically terminate.

- 8.6 Subject to the limitations at Clause 12 and to any limitations contained within the **SoW**, **the Supplier** shall indemnify **the Client**, from and against all liabilities, costs, expenses, damages and losses suffered or incurred by **the Client** arising out of or in connection with any claim made against **the Client** that the Bespoke Software infringes the **Intellectual Property Rights** of any third party.
- 8.7 The Client shall indemnify the Supplier, and shall keep the Supplier fully indemnified, from and against all liabilities, costs, damages and losses suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier, its agents, subcontractors or consultants or any Supplier Affiliate for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with:
- (a) the Client's improper, incorrect or unauthorised use of the Services; or
  - (b) the receipt of and/or use by the Supplier of the Input Materials (or part thereof) in the performance of the Contract.
- 8.8 The Client shall:
- (a) notify **the Supplier** in writing of any claim or potential claim it receives in connection with the infringement of any **Intellectual Property Rights** in the Bespoke Software as soon as is reasonably practicable, and in any event within five Business Days of becoming aware of the claim or potential claim;
  - (b) not make any admission of liability or agree to any settlement or compromise of any such claim without the prior written consent of **the Supplier**;
  - (c) give **the Supplier** sole control of the conduct of any claim or potential claim; and
  - (d) at **the Supplier's** request and expense, give **the Supplier** all reasonable assistance in connection with any negotiations and /or litigation in relation to that claim or potential claim.
- 8.9 **The Supplier** shall, at its own expense defend, or at its option settle, any claim or potential claim against **the Client** referred to in Clause 8.6 (excluding any claim or potential claim arising in respect of any **Input Material** or **Client** misuse of the Services) and pay any final judgment entered against **the Client** on such issue or any settlement thereof provided that **the Client** has complied with its obligations under Clause 8.8.
- 8.10 If all or part of the **Services** becomes, or in the opinion of **the Supplier** may become, the subject of a claim or action for infringement, **the Supplier**, at its own expense and sole discretion, may do one of the following:

- (a) procure for **the Client** the right to use the **Services** or the affected part thereof;
- (b) replace the **Services** or affected part with other suitable **Services**; or
- (c) modify the **Services** or affected part to make the same non-infringing.

In the event that none of the above is deemed reasonably suitable by **the Client**, **the Client** has the right to terminate, at its sole discretion and without incurring any further liability to **the Supplier**, the **Services** affected.

8.11 **The Supplier** shall have no obligation under Clauses 8.6, 8.9 or 8.10 to the extent that a claim or potential claim is based on:

- (a) the combination, operation or use of the **Services** with other **services** or software not provided by **the Supplier**, if such infringement would have been avoided in the absence of such combination, operation or use; or
- (b) use of the **Services** in any manner inconsistent with the **Contract**; or
- (c) the result of the negligence or wilful misconduct of **the Client**, its employees, agents or sub-contractors.

## 9. CONFIDENTIALITY

9.1 Each party shall keep all **Confidential Information** in strict confidence and the **Recipient** shall use the **Disclosing Party's Confidential Information** solely in connection with the performance of this **Agreement**.

9.2 Either party may disclose **Confidential Information**:

- (a) to its employees, officers, representatives, advisers, agents or sub-contractors who need to know such information for the purposes of carrying out that party's obligations under an **Agreement**; and
- (b) as may be required by law, court order or any governmental or regulatory authority (including without limitation the UK Listing Authority) provided that the party disclosing the information shall notify the other party of the information to be disclosed and of the circumstances in which the disclosure is alleged to be required as early as reasonably possible before such disclosure must be made and shall take all reasonable and legal action to avoid such disclosure.

9.3 Each party shall ensure that its employees, officers, representatives, advisers, agents or sub-contractors to whom it discloses such **Confidential Information** comply with this Clause 9.

- 9.4 Neither party shall use any **Confidential Information** for any purpose other than to perform its obligations under this Contract or any other agreement in place between the parties, and not otherwise for its own benefit or the benefit of any third party.
- 9.5 The obligations regarding confidentiality as set out in this Clause remain in full force and effect notwithstanding any termination of this **Agreement** (howsoever occasioned).

## 10. FOIA

- 10.1 The Supplier acknowledges that the Client may be subject to the requirements of the FOIA and the Environmental Information Regulations. The Supplier shall:
- 10.1.1 provide all necessary assistance and cooperation as reasonably requested by the Client to enable the Client to comply with its obligations under the FOIA and Environmental Information Regulations;
  - 10.1.2 transfer to the Client all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Business Days of receipt;
  - 10.1.3 provide the Client with a copy of all Information belonging to the Client requested in the Request For Information which is in its possession or control in the form that the Client requires within 5 Working Days (or such other period as the Client may reasonably specify) of the Client's request for such Information; and
  - 10.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Client.
- 10.2 The Supplier acknowledges that the Client may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Client shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Client shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations.

## 11. WARRANTIES

- 11.1 **The Client** warrants that it has full power to enter into this **Agreement** and to perform its obligations under this **Agreement**.
- 11.2 **The Supplier** warrants that:
- (a) it has full power to enter into this **Agreement** and shall obtain all approvals and consents where necessary for the fulfilment of its obligations under the Agreement; and
  - (b) all persons engaged in the provision of the **Services** shall be appropriately qualified and experienced to undertake their tasks, and shall use reasonable skill, care and diligence when providing the **Services** in accordance with **Good Industry Practice**.
- 11.3 The warranties given by **The Supplier** in this **Agreement** shall not apply to improper, incorrect, or unauthorised use of the **Services** by **The Client** or a third party authorised by **The Client**.
- 11.4 The warranties stated in this Clause 11 are the only warranties made by **The Supplier** in relation to the **Services**. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this **Agreement**.
- 11.5 No employee, agent, consultant or representative of **The Supplier** has the authority to bind **The Supplier** to any oral representation or warranty concerning the **Services** provided by **The Supplier**. Any oral or written representation or warranty not expressly contained in the Contract shall not be enforceable by either party.

## **12. LIMITATIONS OF LIABILITY**

- 12.1 This Clause 12 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants and sub-contractors) to the other party in respect of:
- (a) any breach of this **Agreement**;
  - (b) any use made by **The Client** of the **Services** or any part of them;
  - (c) any indemnity provided under this Agreement; and
  - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this **Agreement**.
- 12.2 Nothing in this **Agreement** limits or excludes the Supplier's liability:
- (a) for death or personal injury resulting from negligence; or

- (b) for any damage or liability incurred by **The Client** as a result of fraud or fraudulent misrepresentation by either party.

12.3 Subject to Clause 12.2:

- (a) The Supplier shall not be liable to the Client for (i) loss of profits (ii) loss of business (iii) loss of goodwill, reputation and/or similar losses (iv) loss of anticipated savings (v) loss of contract (vi) loss of use (vii) loss or corruption of data or information, or (viii) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses, whether or not the Client was aware of the possibility of such heads of loss;
- (b) **The Supplier's** total liability to the Client in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of its obligations under this **Agreement** shall be limited to a sum equal to 100% of the Charges payable under the **SoW** in question in respect of the calendar year in which the claim (or first in a series of connected claims arising out of the same cause) occurred;
- (c) in respect of damage to tangible property caused by any negligent act or omission, or breach or material breach of this Agreement, each party limits its liability to one million pounds (£1,000,000) per event or series of connected events;

12.4 If **The Supplier's** performance of its obligations under this **Agreement** is prevented or delayed by any Non-Supplier Fault, **The Supplier** shall not be liable for any costs, charges or losses sustained or incurred by **The Client** that arise directly or indirectly from such prevention or delay.

12.5 The parties agree that if any limitation or provision contained or expressly referred to in this Clause 12 is held to be invalid under any applicable statute or rule of law, it shall, to that extent, be deemed omitted. If either party becomes liable for loss or damage which would otherwise have been excluded, that liability shall be subject to the other limitations and provisions set out in this Clause 12.

12.6 Nothing in this **Agreement** shall be taken as in any way reducing or affecting a general duty to mitigate loss suffered by a party. Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this **Agreement**, including any Losses for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this **Agreement**.

### 13. DATA PROTECTION

- 13.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 13 is in addition to and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 13.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Data Controller and the Supplier is the Data Processor.
- 13.3 Without prejudice to the generality of Clause 13.1 the Client shall ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of the Contract. Schedule 3 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 13.4 Without prejudice to the generality of Clause 13.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Agreement:
- (a) process that **Personal Data** only on the written instructions of the Client unless the Supplier is instructed to do so by the Information Commissioners Office (ICO). If this is the case, the Supplier shall promptly notify the Client before performing the processing required by the ICO unless Laws prohibit the Provider from so notifying the Client;
  - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data;
  - (c) ensure that all Supplier Personnel who have access to and/or **process** Personal **Data** are obliged to keep the Personal **Data** confidential;
  - (d) not transfer any **Personal Data** outside of the United Kingdom unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
    - (i) the Client or the Supplier has provided appropriate safeguards in relation to the transfer;
    - (ii) the **data subject** has enforceable rights and effective legal remedies;

- (iii) the Supplier complies with its obligations under the **Data Protection Legislation** by providing an adequate level of protection to any **Personal Data** that is transferred; and
- (iv) the Supplier complies with reasonable instructions notified to it in advance by the Client with respect to the **processing** of the **Personal Data**;
- (i) assist the Client, 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;
- (j) notify the Client without undue delay on becoming aware of a **Personal Data** breach by emailing the Client's Data Protection Officer;
- (k) 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
- (l) maintain complete and accurate records and information to demonstrate its compliance with this Clause 13.

**13.5** The Supplier shall not assign, subcontract or otherwise deal with its obligations under this Data Processing Agreement to a sub-processor without the Client's prior written consent. Where consent is given by the Client, the Supplier shall enter into a written agreement with the sub-processor on terms which are similar to those set out in this Clause 13.

**13.6** The Client (as Data Controller) may, at any time on not less than 30 days' notice, revise this **Clause 13** by replacing it with any applicable controller to processor standard **clauses** or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

#### **14. ANTI-BRIBERY AND COUNTER FRAUD**

- 14.1** **The Supplier** shall not offer or give, or agree to give, to **The Client** or any other public body or any person employed by or on behalf of **The Client** or any other public body, any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the **Agreement** or for showing or refraining from showing favour or disfavour to any person in relation to the **Agreement**.
- 14.2** **The Supplier** warrants that it has not paid commission, or agreed to pay commission, to **The Client** or any other public body or any person employed by or on behalf of **The Client** or any other public body in connection with the **Agreement**.

14.3 If **The Supplier**, its employees, or anyone acting on **The Supplier's** behalf, engages in conduct prohibited by clauses 14.1 and 14.2, **The Client** may:

- (a) terminate the **Agreement** and recover from **The Supplier** the amount of any loss suffered by **The Client** resulting from the termination; or
- (b) recover in full from **The Supplier** any other loss sustained by **The Client** in consequence of any breach of those clauses.

## 15. EQUALITY AND NON-DISCRIMINATION

- 15.1 **The Supplier** shall not discriminate against any person contrary to Equality Legislation. **The Supplier** shall provide **The Client** with copies of its Equality Policy on request.
- 15.2 **The Supplier** shall cooperate with **The Client** in regard to **The Client's** obligations to comply with statutory equality duties.
- 15.3 **The Supplier** shall take reasonable commercial steps to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age in its provision of the **Services**.

## 16. HUMAN RIGHTS ACT 1998.

- 16.1 **The Supplier** shall at all times, act in a way which is compatible with the convention rights within the meaning of Section 1 of the Human Rights Act 1998 (as amended).

## 17. TERMINATION

- 17.1 Without prejudice to any other rights or remedies which the parties may have, **The Client** may terminate this **Agreement** without liability by providing **The Supplier** written notice if:
  - (a) **The Supplier** commits a material breach of any of the terms of this **Agreement** and/or any **SoW** and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of being notified in writing of the breach; or
  - (b) **The Supplier** suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a partnership) any partner of the partnership is deemed either unable to pay their debts or as having no reasonable prospect of so

doing, in either case, within the meaning of section 268 of the Insolvency Act 1986;  
or

- (c) **The Supplier** commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors; or
  - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of **The Supplier**; or
  - (e) an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over **The Supplier**; or
  - (f) a floating charge holder over the assets of **The Supplier** has become entitled to appoint, or has appointed, an administrative receiver; or
  - (g) a person becomes entitled to appoint a receiver over the assets of **The Supplier**, or a receiver is appointed over the assets of **The Supplier**; or
  - (h) a creditor or encumbrancer of **The Supplier** attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days; or
  - (i) any event occurs, or proceeding is taken, with respect to **The Supplier** in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 17.1(b) to Clause 17.1(h) (inclusive); or
  - (j) **The Supplier** suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- (i) for convenience, with 30 days' notice.

17.2 **The Supplier** may suspend the provision of **Services** without incurring any liability to **The Client**, if **The Client** fails to pay any undisputed amount due under this **Agreement** within thirty (30) days after its due date for payment.

17.3 On termination of this **Agreement** for any reason:

- (a) Subject to Clause 6.9, **The Client** shall immediately pay to **The Supplier** all of **The Supplier's** outstanding undisputed unpaid invoices, in respect of **Services** supplied but for which no invoice has been submitted, **The Supplier** may submit an invoice, which shall be payable immediately on receipt;

- (b) **The Client** shall, within a reasonable time, return all of **The Supplier's Equipment** and **Pre-existing Materials**. Until they have been returned or repossessed, **The Client** shall be solely responsible for their safe keeping;
  - (c) **The Supplier** shall, within a reasonable time, return to **The Client** all **Documents** containing **The Client's Confidential Information** in the possession or control of **The Supplier**;
  - (d) **The Supplier** shall, within a reasonable time, return all of **The Client's Equipment** and **Pre-existing Materials**. If the Supplier fails to do so, then **The Client** may withhold payment of any outstanding invoice until such time as **The Client's Equipment** is returned.
  - (e) **The Supplier** shall, provide assistance to **The Client** to the extent reasonably necessary for an orderly handover of the relevant **Services**, the terms of such assistance to be agreed and set out in an exit and handover plan; and
  - (f) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 17.4 Should **The Client** give written notice to **The Supplier** within thirty (30) days of termination of this **Agreement** stating that they wish **The Supplier** to return **The Client Data**, then **The Supplier** shall return **The Client Data** within two (2) Business Days of receiving payment in full of any outstanding **Charges** on any **SoW**.
- 17.5 On termination for convenience, **The Client** shall pay for all work that has been started by **The Supplier** under the **SoW**, up to the date of termination.
- 17.6 On termination of this **Agreement** (however arising) the following Clauses shall survive and continue in full force and effect:
- (a) Clause 8;
  - (b) Clause 9;
  - (c) Clause 12;
  - (d) Clause 29;
  - (e) Clause 31;
  - (f) Clause 32
- 17.7 Termination of this **Agreement** shall not prejudice any rights, remedies or obligations of either party which have arisen under this **Agreement** on or before 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 or expiry.

## 18. FORCE MAJEURE

- 18.1 A party, provided that it has complied with the provisions of Clause 18.02, shall not be in breach of this **Agreement**, nor liable for any failure or delay in performance of any obligations under this **Agreement** arising from or attributable to acts, events, omissions or accidents beyond its reasonable control ("**Force Majeure Event**"). The corresponding obligations of the other party will be suspended to the same extent.
- 18.2 Any party that is subject to a **Force Majeure Event** shall not be in breach of this **Agreement** provided that:
- (a) it promptly notifies the other party in writing of the nature and extent of the **Force Majeure Event** causing its failure or delay in performance;
  - (b) it could not have avoided the effect of the **Force Majeure Event** by taking precautions which, having regard to all the matters known to it before the **Force Majeure Event**, it ought reasonably to have taken, but did not; and
  - (c) it has used all **Reasonable Endeavours** to mitigate the effect of the **Force Majeure Event**, to carry out its obligations under this **Agreement** in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 18.3 If the **Force Majeure Event** prevails for a continuous period of more than thirty (30) days, either party may terminate this **Agreement** by giving seven (7) days' written notice to the other party. On the expiry of this notice period, this **agreement** 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.

## 19. VARIATION

- 19.1 Subject to Clause 7, no variation of this **Agreement** or of any of the documents referred to in it shall be valid unless it is in writing and signed by each of the parties in accordance with the **Change Control Procedure** (Schedule 2).
- 19.2 **The Supplier** shall have the right by one month's notice in writing to **The Client** to vary any of the provisions of this **Agreement** (including the Schedules and/or Appendices) at any time so as to comply with any regulations or other requirement applicable to or imposed upon **The Supplier** by any competent regulatory body, the nature of such variation to be discussed with **The Client**.

## 20. WAIVER

- 20.1 Failure to exercise, or any delay in exercising, 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 preclude or restrict any further exercise of that (or any other) right or remedy.
- 20.2 No single or partial exercise of any right or remedy provided under this **Agreement** or by law shall preclude or restrict the further exercise of any such right or remedy.
- 20.3 A waiver (which may be given subject to conditions) of any right or remedy provided under this **Agreement** or by law shall only be effective if it is in writing and shall apply only to the party to whom it is addressed and for the specific circumstances for which it is given. It shall not prevent the party who has given the waiver from subsequently relying on the right or remedy in other circumstances.
- 20.4 Unless specifically provided otherwise, rights arising under this **Agreement** are cumulative and do not exclude rights provided by law.

## 21. SEVERANCE

- 21.1 If any provision of this **Agreement** (or part of any provision) is found by any court or other **Client** of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the **Agreement**, and the validity and enforceability of the other provisions of the **Agreement** shall not be affected.
- 21.2 If a provision of this **Agreement** (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## 22. NON-SOLICITATION

- 22.1 While the **Agreement** is in force, and for a period of twelve (12) months from its expiry or termination for any reason, neither party shall, whether alone or jointly, directly or indirectly, employ or engage (or offer employment or engagement to or contractor agreement) any employee or contractor or consultant of the other save in circumstances where this is agreed with both parties if that employee or contractor or consultant was directly and actively involved with the performance of the **Agreement** and the employment or engagement in question will involve the employee in providing services which are the same as or substantially similar to any of the Services.
- 22.2 This Clause 22 shall not prevent either party (or any **Supplier Affiliate**) soliciting or offering employment or engagement to (or employing or engaging) any employee or

contractor or consultant of the other party if the **Agreement** has terminated (or notice to terminate is served) by reason of that other party's insolvency nor shall it prevent either party (or any **The Supplier Affiliate**) from considering, employing or engaging the other's personnel pursuant to a response to a publicly advertised vacancy.

## **23. ENTIRE AGREEMENT**

- 23.1 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 of this **agreement**.
- 23.2 Each party acknowledges that, in entering into this **Agreement**, it does not rely on any statement, representation, assurance or warranty ("Representation") of any person (whether a party to this agreement or not) other than as expressly set out in the **Agreement**. Each party agrees that the only remedies available to it arising out of or in connection with a Representation shall be for breach of contract.
- 23.3 Nothing in this Clause 23 shall limit or exclude any liability for fraud.

## **24. ASSIGNMENT**

- 24.1 **Either Party** may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this **Agreement**.
- 24.2 Each party that has rights under this **Agreement** is acting on its own behalf and not for the benefit of another person.

## **25. NO PARTNERSHIP OR AGENCY**

- 25.1 Nothing in this **Agreement** is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have **Client** to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **26. RIGHTS OF THIRD PARTIES**

- 26.1 A person who is not a party to this **Agreement** shall not have any rights under the Contract (Rights of Third Parties) Act 1999 to enforce any of the terms of this **Agreement**.

## **27. NOTICES**

- 27.1 A notice given to a party under or in connection with this **Agreement**:
- (a) shall be in writing in English (or accompanied by a properly prepared translation into English);

- (b) shall be signed by or on behalf of the party giving it;
  - (c) shall be sent for the attention of the person, at the address specified in Schedule 3 (or to such other address, or person as that party may notify to the other from time to time, or, if no address or person is designated, then to the registered office or other usual business address of that party); and
  - (d) shall be:
    - (i) delivered personally; or
    - (ii) sent by commercial courier; or
    - (iii) sent via email to key personnel and the email is duly acknowledged by the other party; or
    - (iv) sent by pre-paid first-class post or recorded delivery; or
    - (v) sent by airmail requiring signature on delivery.
- 27.2 If a notice has been properly sent or delivered in accordance with this Clause 30, it will be deemed to have been received as follows:
- (a) if delivered personally, at the time of delivery; or
  - (b) if delivered by commercial courier, at the time of signature of the courier's receipt; or
  - (c) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the day two days after posting; or
  - (d) if sent by airmail, five days from the date of posting.
- 27.3 For the purposes of this Clause:
- (a) all times are to be read as local time in the place of deemed receipt; and
  - (b) if deemed receipt under this Clause 27 is not upon a Working Day, the notice is deemed to have been received upon the commencement of the next subsequent Working Day.
- 27.4 To prove delivery, it is sufficient to prove that:
- (a) if sent by pre-paid first class post, the envelope containing the notice was properly addressed and posted.
- 27.5 The provisions of this Clause 27 shall not apply to the service of any process in any legal action or proceedings.

- 27.6 A notice required to be given under this **Agreement** shall not be validly served if sent by e-mail unless sent and acknowledged by key personnel of both parties.

## 28. DISPUTE RESOLUTION

- 28.1 If a complaint or dispute (a "Dispute") arises in connection with this **Agreement**, then, without prejudice to either party's other rights and remedies, **The Supplier** and **The Client** shall operate the following escalation path to attempt to resolve such Dispute:

- (a) **The Client** shall provide to the **Contract Manager of the Supplier** details of the **Dispute** and the **Contract Manager of the Supplier** shall attempt to resolve the **Dispute** to the satisfaction of **The Client** and **The Supplier**;
- (b) in the event that within the five Working Days of the referral of the **Dispute** to Contract Manager of **the Supplier**, **The Client** is not satisfied that the **Dispute** is being resolved, **The Client** may request that the **Dispute** is referred to **The Supplier's** director in charge of the business unit to which the **Dispute** most closely relates and such director shall attempt to resolve such **Dispute**; and
- (c) in the event that within five Working Days of the referral of the **Dispute** to **The Supplier** director **The Client** is not satisfied that the **Dispute** is being resolved, **The Client** may request that the **Dispute** is referred to **The Supplier's** Chief Executive Officer, who shall attempt to resolve the **Dispute** to the satisfaction of **The Client** and **The Supplier**.

- 28.2 If the **Dispute** is not resolved the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (an "Alternative Dispute Resolution Notice") to the other party requesting a mediation. A copy of the request should be sent to CEDR. The mediation will start not later than 30 days after the date of the Alternative Dispute Resolution Notice.

- 28.3 The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

## 29. FURTHER ASSURANCE

- 29.1 **The Supplier** shall, at its sole cost and expense, do and/or procure to be done all such further acts and things and execute and/or procure the execution of all such other documents as **The Client** may from time to time reasonably require for the purpose of giving **The Client** the full benefit of the provisions of this **Agreement** and for the fulfilment of **The Supplier's** obligations under this **Agreement**.

## 30. PUBLICITY

- 30.1 Without prejudice to **The Client's** obligations under **FOIA** and Clause 9 Confidentiality, and save as specified in any **SoW** neither party shall make any press announcement or publicise the **agreement** or any part thereof in any way, except with the written consent of the other party.

### **31. COUNTERPARTS**

- 31.1 This **Agreement** and any **SoWs** may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original. All the counterparts of a single instrument shall together constitute one and the same instrument.

### **32. GOVERNING LAW AND JURISDICTION**

- 32.1 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.
- 32.2 The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this **Agreement** or its subject matter or formation (including non-contractual disputes or claims).