



G-Cloud 15 Terms and conditions document

Ufonia will typically enter into contracts based on the NHS templates, such as the terms and conditions below.

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AGREED TERMS

1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in this agreement:

Anonymised Data means any anonymised personal data Ufonia creates under this agreement from its use of the Customer's Personal Data.

Applicable Data Protection Laws means:

- (a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- (b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which Ufonia is subject, which relates to the protection of personal data.

Applicable Laws means all applicable laws, statutes and regulation from time to time in force.

Services means the automated telemedicine services detailed in the agreed Statement of Works.

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

Change Order means has the meaning given in clause 6.1.

Control means the beneficial ownership of more than 50% of the issued share capital of the Customer or the legal power to direct or cause the direction of the general management of the Customer.

Customer Materials means all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to Ufonia in connection with the Works, including the items provided pursuant to clause 5.1.4 and Customer Personal Data.

Customer Personal Data means any personal data which Ufonia processes in connection with this agreement, in the capacity of a processor on behalf of the Customer, excluding Anonymised Data.

Deliverables means any outputs of the Work to be provided by Ufonia to the Customer as specified in a Statement of Work, excluding the Software.

EU GDPR means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.

Force Majeure Event means 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; collapse of buildings, fire, explosion or accident; and interruption or failure of utility service.

Insolvency Event means:

- a. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- b. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- c. the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
- d. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- e. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- f. the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- g. a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- h. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within [14] days;
- i. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in a to h (inclusive) above.

Intellectual Property Rights means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral 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.

Milestone means a date by which a part or all of the Work is to be completed, as set out in a Statement of Work.

Software means the software owned by and licensed to which is used by Ufonia in the delivery of the Work.

SoW Charges means the sums payable for the Work as set out in a Statement of Work.

Statement of Work or **SoW** means a detailed plan, agreed in accordance with clause 3, describing the services to be provided by Ufonia, the timetable for their performance and the related matters listed in the statement of work.

Supplier Personal Data means any personal data that Ufonia processes in connection with this agreement, in the capacity of a controller.

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

VAT means value added tax or any equivalent tax chargeable in the UK or elsewhere.

Work means the Available Services which are provided by Ufonia under a Statement of Work, including services which are incidental or ancillary to the Works.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 This agreement shall be binding on, and ensure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.6 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.7 A reference to **writing** or **written** includes email.
- 1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.9 A reference to **this agreement** or to any other agreement or document is a reference to this agreement or such other agreement or document, in each case as varied or novated from time to time. References to clauses are to the clauses of this agreement and references to paragraphs are to paragraphs of this agreement.
- 1.10 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. COMMENCEMENT AND DURATION

- 2.1 This agreement shall commence on the date when it has been signed by all the parties and shall continue, unless terminated earlier in accordance with clause 12 (Termination), until agreed upon date.
- 2.2 The terms of this agreement shall form part of each Statement of Work.
- 2.3 If there are no uncompleted Statements of Work as at the date notice to terminate is served under clause 12, such notice shall terminate this agreement with immediate effect.
- 2.4 If there are uncompleted Statements of Work as at the date notice to terminate is served under clause 12, such notice shall only take effect when the Statement of Work terminates or expires according to its terms and until such time, the terms of this agreement shall remain in force for the purpose of fulfilling each such uncompleted Statement of Work for its duration.
- 2.5 Notwithstanding clause 2.3, the parties shall not enter into any further Statements of Work after the date on which notice to terminate is served.
- 2.6 The Customer may procure any of the Services by agreeing a Statement of Work with Ufonia pursuant to clause 3 (Statements of Work).
- 2.7 Ufonia shall provide the Work for the period specified in the relevant Statement of Work.

3. STATEMENTS OF WORK

- 3.1 Each Statement of Work shall be agreed in the following manner:
 - 3.1.1 the Customer shall ask Ufonia to provide any or all of the Services and provide Ufonia with as much information as Ufonia reasonably requests in order to prepare a draft Statement of Work for the Services requested;
 - 3.1.2 following receipt of the information requested from the Customer Ufonia shall, as soon as reasonably practicable either inform the Customer that it declines to provide the requested Services, or provide the Customer with a draft Statement of Work which Ufonia and the Customer shall discuss and agree and sign when it is agreed.
- 3.2 Each Statement of Work shall be part of this agreement and shall not form a separate contract to it.

4. SUPPLIER'S RESPONSIBILITIES

- 4.1 Ufonia shall use reasonable endeavours to provide the Work and deliver the Deliverables to the Customer in accordance with a Statement of Work in all material respects.
- 4.2 Ufonia shall use reasonable endeavours to meet its Milestones specified in a Statement of Work but any such dates shall be estimates only and time for performance by Ufonia shall not be of the essence of this agreement.
- 4.3 Ufonia shall appoint a team in respect of the Work to be performed under each Statement of Work, such team to be identified in the relevant Statement of Work.

Ufonia may replace members of its team from time to time where reasonably necessary.

- 4.4 Ufonia is not clinically responsible for the Customer's patients and the Service does not include clinical diagnosis. Clinical responsibility remains with the Customer at all times.

5. CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall:

5.1.1 Co-operate with Ufonia in all matters relating to the Work;

5.1.2 appoint a team in respect of the Work to be performed under each Statement of Work, such team to be identified in the relevant Statement of Work. The Customer may replace members of its team from time to time where reasonably necessary;

5.1.3 provide, for Ufonia, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's Persona Data as reasonably required by Ufonia including any such access as is specified in a Statement of Work;

5.1.4 provide to Ufonia in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) required under a Statement of Work or otherwise reasonably required by Ufonia in connection with the Work and ensure that they are accurate and complete;

5.1.5 obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable Ufonia to provide the Work, in all cases before the date on which the Work is to start;

5.1.6 comply with any additional responsibilities of the Customer as set out in the relevant Statement of Work;

5.1.7 use reasonable endeavours to meet its Milestones specified in a Statement of Work; and

5.1.8 pay the Charges pursuant to clause 7.

- 5.2 If Ufonia's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, Ufonia shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

- 5.3 The Customer remains clinically responsible for its patients, notwithstanding the Service delivered by Ufonia. The Customer shall indemnify Ufonia against all liabilities, costs, expenses, damages and losses suffered or incurred or paid by Ufonia arising out of or in connection with any claim brought by third parties against Ufonia, its agents, subcontractors or consultants relating to or for actual or alleged clinical negligence.

6. CHANGE CONTROL

- 6.1 Either party may propose changes to a Statement of Work, including the scope or execution of the Work but no proposed changes shall come into effect until a relevant **Change Order** has been signed by both parties.
- 6.2 If Ufonia wishes to make a change to the Work it shall provide a draft Change Order to the Customer.
- 6.3 If the Customer wishes to make a change to the Works:
 - 6.3.1 it shall notify Ufonia and provide as much detail as Ufonia reasonably requires of the proposed changes, including the timing of the proposed change; and
 - 6.3.2 Ufonia shall, as soon as reasonably practicable after receiving the information at clause 6.3.1, provide a draft Change Order to the Customer.
- 6.4 If the parties agree to a Change Order, they shall sign it and that Change Order shall amend the relevant Statement of Work.

7. CHARGES AND PAYMENT

- 7.1 In consideration of the provision of the Works by Ufonia, the Customer shall pay the SoW Charges.
- 7.2 Ufonia shall invoice the Customer for the SoW Charges at the intervals specified, or on the achievement of the Milestones indicated, in the Statement of Work. If no intervals are so specified, Ufonia shall invoice the Customer at the end of each month for Work performed during that month.
- 7.3 The Customer shall pay each invoice submitted to it by Ufonia in accordance with the SOW. If no payment dates are specified in the SOW, within 30 days of receipt of invoice to a bank account nominated in writing by Ufonia from time to time.
- 7.4 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Ufonia any sum due under this agreement on the due date:
 - 7.4.1 the Customer 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 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%; and
 - 7.4.2 Ufonia may suspend part or all of the Work until payment has been made in full.
- 7.5 All sums payable to Ufonia under this agreement are exclusive of VAT which the Customer shall in addition pay on delivery of a VAT invoice and shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 Ufonia owns or is licensed to use all IPRs in the Software.
- 8.2 In relation to the Deliverables:

- 8.2.1 Ufonia and its licensors shall retain ownership of all IPRs in the Deliverables, excluding the Customer Materials;
 - 8.2.2 Ufonia grants the Customer a fully paid-up, worldwide, non-exclusive, royalty-free licence in perpetuity to copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Deliverables in its business; and
 - 8.2.3 the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 8.2.2 to third parties.
- 8.3 In relation to the Customer Materials, the Customer:
- 8.3.1 and its licensors shall retain ownership of all IPRs in the Customer Materials; and
 - 8.3.2 grants to Ufonia a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this agreement for the purpose of providing the Work to the Customer.
- 8.4 Ufonia:
- 8.4.1 warrants that to its knowledge and belief the receipt, use of the Deliverables by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party;
 - 8.4.2 shall, subject to the exclusions and limitations in clause 11, indemnify the Customer against all direct liabilities, costs, expenses, damages and losses suffered or incurred or paid by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third parties Intellectual Property Rights arising out of, or in connection with, the receipt and use of the Deliverables.
 - 8.4.3 shall not be in breach of the warranty at clause 8.4.1, and the Customer shall have no claim under the indemnity at clause 8.4.2 to the extent the infringement arises from:
 - (a) the use of Customer Materials in the development of, or the inclusion of the Customer Materials in, the Work or any Deliverable;
 - (b) any modification of the Work or any Deliverable, other than by or on behalf of Ufonia; and
 - (c) compliance with the Customer's specifications or instructions.
- 8.5 The Customer:
- 8.5.1 warrants that the receipt and use in the performance of this agreement by Ufonia, its agents, subcontractors or consultants of the Customer Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
 - 8.5.2 shall indemnify Ufonia against all direct liabilities, costs, expenses, damages and losses suffered or incurred or paid by Ufonia arising out of or in connection with any claim brought against Ufonia, 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 Customer Materials.

8.6 If either party (**Indemnifying Party**) is required to indemnify the other party (**Indemnified Party**) under this clause 8, the Indemnified Party shall:

- 8.6.1 notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity (**IPRs Claim**);
- 8.6.2 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;
- 8.6.3 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
- 8.6.4 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.

9. DATA PROCESSING

- 9.1 Ufonia shall have the right to use Anonymised Data in order to test, train and audit its Software.
- 9.2 For the purposes of this clause 9, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.
- 9.3 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 9.4 The parties have determined that, for the purposes of Applicable Data Protection Laws Ufonia shall process the personal data as processor on behalf of the Customer.
- 9.5 Should the determination in clause 9 change, the parties shall use all reasonable endeavours to make any changes that are necessary to this clause 9.
- 9.6 The Customer consents to, (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by Ufonia in connection with the processing of Supplier Personal Data, provided these are in compliance with the then-current version of Ufonia's privacy policy available at <https://ufonia.com/privacy-policy/> (**Privacy Policy**). In the event of any inconsistency or conflict between the terms of the Privacy Policy and this agreement, the Privacy Policy will take precedence.
- 9.7 Without prejudice to the generality of clause 9.3, the Customer will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of Customer Personal Data to Ufonia and or lawful collection of the same by Ufonia for the duration and purposes of this agreement.

- 9.8 In relation to the Customer Personal Data, the Statement of Works sets out the scope, nature and purpose of processing by Ufonia, the duration of the processing and the types of personal data and categories of data subject.
- 9.9 Without prejudice to the generality of clause 9.3, Ufonia shall, in relation to Customer Personal Data:
- 9.9.1 process that Customer Personal Data only on the documented instructions of the Customer, which shall be to process the Customer Personal Data for the purposes set out in the Statement of Works (Processing, personal data and data subjects) unless Ufonia is required by Applicable Laws to otherwise process that Customer Personal Data (**Purpose**). Where Ufonia is relying on Applicable Laws as the basis for processing Customer Processor Data, Ufonia shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from notifying the Customer on important grounds of public interest. Ufonia shall inform the Customer if, in the opinion of Ufonia, the instructions of the Customer infringe Applicable Data Protection Laws;
 - 9.9.2 implement the technical and organisational measures set out in the Statement of Works to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are 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;
 - 9.9.3 ensure that any personnel engaged and authorised by Ufonia to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
 - 9.9.4 assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to Ufonia), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 9.9.5 notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
 - 9.9.6 at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the agreement unless Ufonia is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this clause 9.9.6 Customer Personal Data shall be considered deleted where it is put beyond further use by Ufonia; and
 - 9.9.7 maintain records to demonstrate its compliance with this clause 9.
- 9.10 The Customer provides its prior, general authorisation for Ufonia to:
- 9.10.1 appoint processors to process the Customer Personal Data, provided that Ufonia:

- (a) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on Ufonia in this clause 9;
- (b) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of Ufonia; and
- (c) shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to Ufonia's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify Ufonia for any losses, damages, costs (including legal fees) and expenses suffered by Ufonia in accommodating the objection. [OPTIONAL CLAUSE: Any dispute in relation to this clause 9.10.1(c) may be referred to dispute resolution pursuant to clause 26.]

9.10.2 transfer Customer Personal Data outside of the UK as required for the Purpose, provided that Ufonia shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of Ufonia, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).

9.11 The parties may agree in writing to vary this clause 9 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

9.12 Ufonia shall provide all reasonable assistance to the Customer in the preparation of any data protection impact assessment (**DPIA**) prior to commencing any processing under the Statement of Works.

9.13 Ufonia's liability for losses arising from breaches of this clause 9 is as set out in clause 11.6.1.

10. CONFIDENTIALITY

10.1 Each party undertakes that it shall not at any time and for a period of [five] years after termination or expiry of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 10.2.1.

10.2 Each party may disclose the other party's confidential information:

10.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10; and

- 10.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.3 No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

11. LIMITATION OF LIABILITY

- 11.1 Ufonia has obtained insurance cover in respect of its own legal liability for individual claims not exceeding

£5,000,000 per employers' liability claim;

£1,000,000 per public liability claim; and

£1,000,000 per professional indemnity claim

The limits and exclusions in this clause reflect the insurance cover Ufonia has been able to arrange, and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

- 11.2 References to liability in this clause 11 (Limitation of liability) include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

- 11.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

- 11.4 Nothing in this clause 11 shall limit the Customer's payment obligations under this agreement.

- 11.5 Nothing in this agreement limits any liability which cannot legally be limited, including but not limited to liability for:

11.5.1 death or personal injury caused by negligence; and

11.5.2 fraud or fraudulent misrepresentation.

- 11.6 Subject to clause 11.3 (no limitations in respect of deliberate default) and clause 11.5 (liabilities which cannot legally be limited), Ufonia's total liability to the Customer:

11.6.1 for loss arising from Ufonia's failure to comply with its data processing obligations under clause 9 (Data protection) shall not exceed £1,000,000;

11.6.2 for all other loss and damage shall not exceed £1,000,000; and

11.6.3 under 8.4.2 (IPR indemnity) shall not exceed £1,000,000.

- 11.7 Subject to clause 11.5 (Liabilities which cannot legally be limited), the following types of loss are excluded:

11.7.1 loss of profits;

11.7.2 loss of sales or business;

- 11.7.3 loss of agreements or contracts;
 - 11.7.4 loss of anticipated savings;
 - 11.7.5 loss of use or corruption of software, data or information;
 - 11.7.6 loss of or damage to goodwill; and
 - 11.7.7 indirect or consequential loss.
- 11.8 The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.
- 11.9 Unless the Customer notifies Ufonia that it intends to make a claim in respect of an event within the notice period, Ufonia shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire [12] months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

12. TERMINATION

- 12.1 Without affecting any other right or remedy available to it, either party may terminate this agreement without cause on [x] months' written notice to the other party, not to be served before the [1 year] anniversary of the commencement of this agreement.
- 12.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- 12.2.1 the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of [30] days after being notified in writing to do so;
 - 12.2.2 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;
 - 12.2.3 the other party suffers an Insolvency Event; or
 - 12.2.4 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 12.3 For the purposes of clause 12.2.1 **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this agreement.
- 12.4 Without affecting any other right or remedy available to it, Ufonia may terminate this agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than [30] days after being notified in writing to make such payment.

13. OBLIGATIONS ON TERMINATION AND SURVIVAL

- 13.1 **Obligations on termination or expiry**

On termination or expiry of this agreement:

13.1.1 the Customer shall immediately pay to Ufonia all of Ufonia's outstanding unpaid invoices and interest and, in respect of the Work supplied but for which no invoice has been submitted, Ufonia may submit an invoice, which shall be payable immediately on receipt; and

13.1.2 Ufonia shall on request return any of the Customer Materials not used in the provision of the Work.

13.2 Survival

13.2.1 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

13.2.2 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.

14. FORCE MAJEURE

14.1 Provided it has complied with clause 14.3, 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.

14.2 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.

14.3 The Affected Party shall:

14.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than [30] 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 the agreement; and

14.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

14.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than [12 weeks], the party not affected by the Force Majeure Event may terminate this agreement by giving [4 weeks'] written notice to the Affected Party.

15. ASSIGNMENT AND OTHER DEALINGS

15.1 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

- 15.2 Ufonia may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under this agreement, provided that Ufonia gives prior written notice of such dealing to the Customer.

16. VARIATION

Subject to clause 6 (Change control), no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. WAIVER

- 17.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

- 17.2 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.

18. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

19. SEVERANCE

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

- 19.2 If any provision or part-provision of this agreement is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. ENTIRE AGREEMENT

- 20.1 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.

21. CONFLICT

- 21.1 If there is an inconsistency between any of the provisions of this agreement and the provisions of the Schedules, the provisions of this agreement shall prevail.

- 21.2 If there is an inconsistency between the provisions of this agreement and any Statement of Work, the Statement of Work shall prevail.

22. NO PARTNERSHIP OR AGENCY

- 22.1 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.

- 22.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

23. THIRD PARTY RIGHTS

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

24. NOTICES

- 24.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

24.1.1 delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

24.1.2 sent by email to the address specified at the beginning of this agreement.

- 24.2 Any notice shall be deemed to have been received:

24.2.1 if delivered by hand, at the time the notice is left at the proper address;

24.2.2 if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting; or

24.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 24.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

- 24.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

25. COUNTERPARTS

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

- 25.2 Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this agreement.

26. MULTI-TIERED DISPUTE RESOLUTION PROCEDURE

- 26.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

26.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting

documents. On service of the Dispute Notice, the chief executive of the Customer and chief executive of Ufonia shall attempt in good faith to resolve the Dispute;

26.1.2 If the chief executives are for any reason unable to resolve the Dispute within [30] days of it being referred to them, 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 [20] days after the date of the ADR notice.

26.2 If the Dispute is not resolved within [30] days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of [30] days, or the mediation terminates before the expiration of the said period of [30] days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 27.

26.3 Nothin in this clause 26 shall prevent either party applying to court for urgent relief.

27. GOVERNING LAW

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

28. JURISDICTION

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