

# **CREATIVE NETWORK CONSULTING LIMITED**

## **TERMS AND CONDITIONS OF SALE**



**Creative ITC**

## 1. INTERPRETATION

### 1.1 Definitions. In these Conditions, the following definitions apply:

**Applicable Law:** means all national, supranational, foreign or local laws (including case law), legislation, statutes, statutory instruments, rules, regulations, edicts, by-laws or directions or from government or governmental agencies, including any rules, regulations, guidelines or other requirements of relevant regulatory authorities which have the force of law together with any industry codes of practice in effect from time to time, including the Data Protection Legislation;

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

**Change of Control:** means the sale of all or substantially all the assets of a party; any merger, consolidation or acquisition of a party with, by or into another corporation, entity or person; or any change in the direct or indirect ownership of more than fifty percent (50%) of the voting capital stock of a party in one or more related transactions;

**Commencement Date:** has the meaning set out in clause 2.2;

**Committed Costs:** means (i) any committed costs not yet incurred; and/or (ii) any sunk costs already spent; and/or (iii) any other irrecoverable costs incurred in providing the Services, including, in the event a SOW is terminated before the Services Commencement Date, any costs (including costs of resource) spent on the pre-sales process, the proposal stage, workshops or other project setup costs, provided such costs can be evidenced on request;

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 16.7, including the terms and conditions of any attached schedules and/or appendices;

**Consultancy Services:** means any professional services performed by the Supplier's Personnel for the Customer;

**Contract:** the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions, incorporating and Orders and/or Statements of Work;

**Customer:** the entity who purchases the Goods and/or Services from the Supplier under an Order or Statement of Work;

**Customer Materials:** any documents, records or other materials provided or made available to the Supplier or any of its Personnel by or on behalf of the Customer;

**Data Protection Legislation:** means all applicable data protection or privacy laws in force from time to time in the UK, including the General Data Protection Regulation 2016/679 ("GDPR"), the retained EU law version of the GDPR (the "UK GDPR"), the UK Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003 as amended;

**Deliverables:** any deliverables set out in an Order or Statement of Work;

**Delivery Location:** has the meaning set out in clause 4.2;

**Force Majeure Event:** has the meaning given to it in clause 14.1;

**Goods:** the goods (or any part of them) including IT hardware and/or software as provided by the Supplier, as set out in the Order or Statement of Work;

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier, including as provided in a Statement of Work;

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

**Order/Purchase Order:** the Customer's order for the supply of Goods and/or Services under this Contract, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be;

**Personnel:** means officers, directors, employees, workers and agents (including any persons hired as consultants or contract staff) of either party;

**Services:** the services, including any Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification;

**Services Commencement Date:** means in respect of a Statement of Work, the date as specified in each Statement of Work upon which the Supplier first starts to perform the Services (or part thereof) under such Statement of Work;

**Service Specification:** the description or specification for the Services provided in writing by the Supplier to the Customer, including as provided under a Statement of Work;

**Statement of Work or SOW:** means a statement of work under which the Supplier agrees to supply Goods and/or Services to the Customer in accordance with this Contract;

**SOW Term:** means the period as stated in each Statement of Work during which the Supplier is to provide the Goods and/or Services to the Customer, and any extension to that period agreed in writing;

**Supplier:** Creative Network Consulting Ltd, registered in England and Wales with company number 07695745;

**Supplier Materials:** has the meaning set out in clause 8.1(g);

**Third Party Product:** means hardware or software provided by the Supplier but which is not manufactured or developed by the Supplier;

**TUPE:** means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes e-mails.

## 2. **BASIS OF CONTRACT**

2.1 An Order or Statement of Work constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 An Order shall only be deemed to be accepted when the Supplier issues written acceptance of such Order and a SOW shall only be deemed to be accepted when the Supplier signs such Statement of Work, at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Each Statement of Work shall commence on the Services Commencement Date and, subject to the provisions of this Contract, shall continue for the SOW Term.

2.4 This Contract shall remain in place for a period of three (3) years, after which it shall continue on a rolling annual basis until and unless terminated in accordance with its terms. In the event that this Contract is terminated, all outstanding Statements of Work then in force at the date of such termination shall continue in full force and effect for the remainder of the term of such Statement of Work unless terminated in accordance with the terms of this Contract or such Statement of Work.

2.5 The termination of any Statement of Work shall not affect the continuation of any other Statement of Work or this Contract.

2.6 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

- 2.7 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.8 The Contract will be subject to these Conditions to the exclusion of all other terms, conditions, provisions and/or statements including any terms and conditions which the Customer purports to apply under any Purchase Order, acknowledgement or confirmation of order or delivery, specification or any other document issued by the Customer (whether introduced or made prior to or subsequent to these Conditions) or which are implied by trade, custom, practice or course of dealing.
- 2.9 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue (unless agreed otherwise by the Supplier).
- 2.10 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

### **3. GOODS**

- 3.1 The Goods are described in the Goods Specification.
- 3.2 The Supplier reserves the right to amend the Goods Specification if required by Applicable Law.

### **4. DELIVERY OF GOODS**

- 4.1 The Supplier shall use reasonable endeavours to ensure that:
- (a) the third-party distributor of the Goods, who is not a party to this Contract, shall upon each delivery of the Goods, provide the Customer with a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - (b) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree, including as agreed in a Statement of Work (**Delivery**

**Location**), at any time after the Supplier notifies the Customer that the Goods are ready.

- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery shall not be of the essence.
- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any delay in delivery of the Goods or failure to deliver the Goods to the extent that such delay or failure is caused by a Force Majeure Event, or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.6 If the Customer fails to take delivery of the Goods within twenty (20) Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
  - (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready;
  - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance) and any further transportation costs; and
  - (c) the Supplier shall not be liable for the costs and expenses incurred by the Customer in obtaining replacement goods in accordance with clause 4.5.
- 4.7 If thirty (30) Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.9 In regard to damage in transit, the Customer shall examine the Goods upon delivery and shall notify the Supplier in writing as soon as possible (and in any event within three (3) working days from delivery) of any visible damage to or short delivery of the Goods, in which case the Supplier shall make good any shortage in the Goods and

replace any Goods damaged in transit as soon as it is reasonable to do so. In the absence of any notification by the Customer in accordance with this clause 4.9, the Supplier shall not be liable for any damage to, or short delivery of, the Goods.

## **5. QUALITY OF GOODS**

5.1 The Supplier shall pass down the benefit of any guarantee or warranty to the Customer that may have been given to the Supplier by a third-party manufacturer or supplier in regard to the Goods.

5.2 The Supplier will on request supply to the Customer (insofar as possible) details of the terms and conditions of any such guarantee or warranty, but the Customer shall be responsible for instructing itself on the terms of the same and ensuring full compliance with the terms thereof.

5.3 The Customer shall ensure that the Goods are properly serviced, maintained and operated in accordance with any guarantee or warranty of the third-party manufacturer or supplier and are not fitted or used with any parts, accessories or ancillary equipment other than those stated by the Supplier (or third-party manufacturer or supplier) in writing to be suitable.

5.4 Subject to clause 5.5, if:

(a) the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with any warranty or guarantee passed down to it in accordance with clause 5.1; and

(b) the Supplier is given a reasonable opportunity of examining such Goods and as a result of this examination agrees that the Goods do not comply with any warranty or guarantee passed down to the Customer in accordance with clause 5.1; and

(c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full. The Supplier shall act reasonably in determining whether the Goods comply with any warranty or guarantee when examining the Goods in accordance with clause 5.4(b).

5.5 The Supplier shall not be liable for the Goods' failure to comply with any warranty or guarantee passed down to it in accordance with clause 5.1 if:

(a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.4;

(b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

- (c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied or agreed to by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with Applicable Law;
- (g) the Goods require a corresponding software update in order to function properly which is unobtainable by the Supplier and which is not within the Supplier's remit of control.

5.6 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with any warranty or guarantee passed down to it in accordance with clause 5.1.

5.7 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 5.4.

## **6. TITLE AND RISK**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery in accordance with clause 4.3.

6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(l); and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(l), then, without limiting any other right or remedy the Supplier may have:
- (a) the Customer's right to use them in the ordinary course of its business ceases immediately; and
  - (b) the Supplier may at any time:
    - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
    - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **7. SUPPLY OF SERVICES**

- 7.1 The Supplier shall use all reasonable endeavours to provide the Services to the Customer in accordance with the Service Specification.
- 7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Services Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any Applicable Law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## **8. CUSTOMER'S OBLIGATIONS**

- 8.1 The Customer shall:
- (a) ensure that the terms of the Order and the Goods Specification and/or the Services Specification are complete and accurate;
  - (b) co-operate with the Supplier in all matters relating to the Services;
  - (c) provide the Supplier, its Personnel and subcontractors, with access to the Customer's premises, office accommodation, equipment and other facilities as reasonably required by the Supplier to provide the Services;
  - (d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
  - (e) prepare the Customer's premises for the supply of the Services;

- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
- (g) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

8.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) the Supplier shall, without limiting its other rights or remedies, have the right to (i) suspend performance of the Services until the Customer remedies the Customer Default; and (ii) rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

8.3 The Customer shall comply with (and where required will formally accept by clicking, or where necessary signing and returning to the Supplier or the vendor of a Third Party Product within any timeframes specified by the Supplier), any standard software licence agreement and/or end-user licence agreement which may apply to the Customer's use of a Third Party Product.

8.4 The Customer acknowledges and agrees that to the extent an Order or SOW specifies the provision of cloud software and/or support services, the Supplier shall (i) contract for such cloud software and support services on the Customer's behalf (unless the Supplier is providing the support services itself), and the Customer shall be bound by all the terms and conditions of the third-party provider that relate to such cloud software and support services; and (ii) the Supplier will facilitate the Customer's use of such services, however the third-party provider of the cloud software and support services is the actual and underlying provider of such software and services and owns and operates the equipment and technology used to deliver those services. The Supplier is not liable for, and cannot provide any guarantee or warranty related to such third-party provider or the cloud software and support services (or any other Third-Party Products or services). In addition, the Customer acknowledges and agrees to sign such separate agreements with the third-party provider of cloud software and support services as may be required, including any end-user licence agreements.

- 8.5 The Customer shall indemnify and hold harmless the Supplier from and against all third-party claims arising from or in connection with (i) any failure by the Customer to accept, perform or comply with any software agreement, end-user licence agreement or other third-party provider terms and conditions; and/or (i) the Customer's use of the cloud software and/or support services.

**9. CHARGES AND PAYMENT**

- 9.1 The price for Goods or Services shall be the price set out in the Order or Statement of Work (as applicable). The price set out in the Order is an estimation only and is subject to change depending on local charges, taxes or rates which may vary the final price, where applicable.
- 9.2 The price of the Goods is inclusive of all costs and charges of packaging, insurance and transport of the Goods. These costs and charges are subject to change depending on local charges, taxes or rates which may vary the final price, where applicable.
- 9.3 The charges for Services shall be on a time and materials basis and:
- (a) the charges shall be calculated in accordance with the costs of materials, labour, sub-contracts, transport, taxes and duties and all other relevant costs at the date of the Order or as agreed in a SOW;
  - (b) the Supplier's charges for each individual person are calculated on the basis of an eight-hour day from 9.00 am to 5.00 pm worked on Business Days;
  - (c) the Supplier shall be entitled to vary the charge for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.3(b); and
  - (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses provided these are agreed with the Customer in advance of being incurred, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 9.4 The Supplier reserves the right to:
- (a) increase its standard daily fee rates for the charges for the Services, provided that the Supplier will give the Customer written notice of any such increase at least 1 month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 3 weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving 1 weeks' written notice to the Customer, provided that the provisions of clause 13.4(a) shall comply to any such termination; and

- (b) increase the price of the Goods, by giving notice to the Customer at any time up to 15 working days following delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
  - (i) any factor beyond the control of the Supplier (including, but not limited to, foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
  - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

9.5 In respect of Goods, the Supplier shall invoice the Customer on or at any time after delivery, though it may request the Customer to pay funds on account before this time. In respect of Services, the Supplier shall invoice the Customer monthly in arrears unless agreed otherwise in a Statement of Work.

9.6 The Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

9.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.8 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclay's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

9.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

- 9.10 If the Customer cancels the Order or Statement of Work before delivery of the Goods and/or performance of the Services then the Supplier shall use its best endeavours to recover any Committed Costs for the Goods and/or Services. Should the Supplier be unable to recover all or any such Committed Costs, the Supplier shall, at its discretion, be entitled to charge the Customer for such Committed Costs, including any interest and VAT or equivalent, where payable.
- 9.11 Any amounts payable by the Customer pursuant to clause 9.10 shall be invoiced by the Supplier within fourteen (14) days of the date of cancellation.
- 9.12 In the event that the Customer, having agreed a time for delivery of Consultancy Services, cancels or materially amends a booking for Consultancy Services (whether temporarily or indefinitely) then the following cancellation charges shall apply:
- 9.12.1 cancellation within up to 24 hours of agreed date for work commencing: 100% of the agreed Service Charges for such Consultancy Services;
- 9.12.2 cancellation within 24 up to 96 hours of agreed date for work commencing: 75% of the agreed Service Charges for such Consultancy Services;
- 9.12.3 cancellation exceeding 96 hours of agreed date for work commencing: 50% of the agreed Service Charges for such Consultancy Services;
- in addition to all charges reasonably incurred by the Supplier in fulfilling the booking up until the date of receipt of the amendment or cancellation.

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 10.3 All Supplier Materials and any amendments additions or changes to them are and shall remain the exclusive property of the Supplier and nothing in this Contract or otherwise shall confer on the Customer or its Personnel any right, title or interest in respect of such materials.
- 10.4 All Customer Materials shall remain the exclusive property of the Customer and nothing in this Contract or otherwise shall confer on the Supplier or its Personnel any right, title or interest in respect of such materials.
- 10.5 Subject to the Customer obtaining all necessary consents from third party licensors, the Customer hereby grants to the Supplier a non-exclusive, non-transferable, revocable,

royalty-free licence for the Supplier to use such of the Customer IPR as relates to the Services strictly for the purposes of and to the extent necessary to perform its obligations under this Contract.

## **11. CONFIDENTIALITY AND DATA PROTECTION**

- 11.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature, any confidential information concerning the disclosing party's business, its products or services or any other information which could reasonably be considered as confidential by its very nature (**confidential information**) which has been disclosed to the receiving party by the other party (**disclosing party**), its Personnel or subcontractors. The receiving party shall only disclose Confidential Information to those of its Personnel, subcontractors, auditors and professional advisors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such Personnel, subcontractors, auditors and professional advisors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction, provided that the receiving party shall, as far as it is able to do so, provide the disclosing party with immediate written notice of any request for disclosure so that the disclosing party may seek a protective order or other appropriate remedy. This clause 11 shall survive termination of the Contract.
- 11.2 Where the Supplier acts as the Customer's Data Processor (as defined under the Data Protection Legislation) under this Contract, it shall comply with the obligations as set out under Schedule 1.

## **12. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - (b) fraud or fraudulent misrepresentation; or
  - (c) any other liability which cannot otherwise be excluded or limited by law.
- 12.2 Subject to clause 12.1:
- (a) the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, wasted expenditure, loss of, damage to or corruption to customer data, loss of future business, loss of goodwill or similar losses, losses of opportunity, loss of anticipated savings

or any indirect, special, incidental or consequential loss arising under or in connection with the Contract; and

- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the lower of 125% of the charges paid to the Supplier in the year preceding such claim, or £100,000.00 (one hundred thousand British pounds).

12.3 Other than as set out within this Contract, any implied terms, warranties, representations, conditions and undertakings, whether express or implied, whether by statute, common law, custom, trade usage, course or dealings or otherwise in respect of the Goods and/or Services are, to the fullest extent permitted by law, excluded from the Contract, this includes the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982.

12.4 This clause 12 shall survive termination of the Contract.

### **13. TERMINATION**

13.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
- (b) 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 or (being an individual) is deemed either unable to pay its 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 (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where 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;
- (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) other than for the sole purpose of a scheme for a solvent amalgamation of the

other party with one or more other companies or the solvent reconstruction of that other party;

- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) 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 its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(b) to clause 13.1(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- (l) the other party's financial position deteriorates to such an extent that in the Supplier's reasonable opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

13.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if (i) the Customer fails to pay any amount due under this Contract on the due date for payment; or (ii) the Supplier becomes aware that a Customer Change of Control is anticipated, in contemplation or has occurred (where the Supplier has not given its prior written consent to such Change of Control).

13.3 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

13.4 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest as well as any Committed Costs the Supplier has or will incur (provided the Supplier uses reasonable endeavours

to mitigate any such costs) and, in respect of Services supplied but for which no invoice has yet been submitted the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

#### **14. FORCE MAJEURE**

- 14.1 For the purposes of this Contract, a **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, pandemic, epidemic, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or other similar event; or default of suppliers or subcontractors.
- 14.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 14.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than four (4) weeks, either party shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the other party.

#### **15. TUPE**

- 15.1 It is not anticipated that the employment of any person will transfer from the Customer to the Supplier pursuant to this Contract.
- 15.2 Where any individual is transferred from the Customer to the Supplier by virtue of TUPE, without limiting any other remedy available to the Supplier, the Customer

agrees to indemnify and hold the Supplier harmless against any liability howsoever arising prior to the date of said transfer.

## **16. GENERAL**

### **16.1 Assignment and other dealings.**

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

### **16.2 Notices.**

- (a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address commonly used by the parties to this agreement in the course of business; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

### **16.3 Severance.**

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it

is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 16.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 16.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 16.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by an authorized signatory of each party.
- 16.8 **Governing law.** This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 16.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).
- 16.10 **Anti-Bribery.** Both Parties agree to comply with Applicable Laws relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010, the U.S. Foreign Corrupt Practices Act and all laws enacted to implement the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions.

## **Schedule 1 – Data Protection Obligations**

1. Where the parties agree that the Supplier shall be acting as the Customer’s Data Processor in providing the Services, the applicable Order or Statement of Work shall set out the subject-matter and duration of the Processing, the nature and purpose of the Processing, the type of Personal Data and the categories of Data Subjects. All defined terms within this Schedule shall have the meaning as set out within the Data Protection Legislation.
2. In storing and otherwise Processing Personal Data on behalf of the Customer (the “Customer Personal Data”), the Supplier shall:
  - (i) comply with all applicable Data Protection Legislation in the Processing of the Customer Personal Data; and
  - (ii) not Process the Customer Personal Data other than on the Customer’s lawful documented instructions.
3. The Supplier shall take all reasonable steps to ensure the reliability of all Personnel who may have access to Customer Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know/access the Customer Personal Data and ensuring that all such individuals are subject to adequate confidentiality undertakings or professional or statutory obligations of confidentiality.
4. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Supplier shall, in relation to the Customer Personal Data, implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk.
5. The Supplier shall:
  - (i) promptly notify the Customer if it receives a request from a Data Subject in respect of Customer Personal Data; and
  - (ii) notify the Customer without undue delay upon becoming aware of a Personal Data Breach affecting Customer Personal Data, providing the Customer with sufficient information to allow the Customer to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Legislation.
  - (iii) co-operate with the Customer and take reasonable commercial steps as are directed by the Customer to assist in the investigation, mitigation and remediation of each such Personal Data Breach.
6. The Supplier shall, at the choice of the Customer, delete or return all the Customer Personal Data to the Customer after the end of the provision of services relating to the Processing, and shall delete existing copies unless Applicable Law requires storage of the Customer Personal Data for a continued period.
7. The Supplier shall make available to the Customer on request all information necessary to demonstrate compliance with this Schedule 1, and to a maximum amount of once per annum shall allow for and contribute to audits, including inspections, by the Customer or an auditor

mandated by the Customer in relation to the Processing of Customer Personal Data by the Supplier.

8. The Supplier shall give the Customer notice before it engages any Sub-Processor. Within ten (10) days of the Supplier's notice, the Customer shall either give its written authorization for the use of such new Sub-Processor or, if the use of such Sub-Processor is not accepted by the Customer, the Customer shall be entitled to terminate the Contract by giving the Supplier not less than 1 months' written notice. The Supplier shall ensure that data protection obligations at least as comprehensive and binding as set out in this Schedule 1 shall be imposed on any Sub-Processor.

9. In the event that Customer Personal Data is transferred to a third country (meaning any country outside the EEA) or international organisation, the Supplier shall ensure that either (i) appropriate safeguards are in place in relation to the transfer (pursuant to section 46 of the UK GDPR); (ii) that the transfer is based on an adequacy decision (pursuant to section 45 of the UK GDPR); or (iii) that the transfer is otherwise permitted under the Data Protection Legislation.