

**dated**

**xx**

**[Provider]**

**Terms and Conditions for the supply of Goods and/or Services**

## Contents

1	Interpretation .....	1
2	Basis of Contract .....	5
3	Supply of Goods and/or Services .....	5
4	Buyer remedies .....	8
5	Buyer's obligations .....	9
6	Charges and payment .....	9
7	Delay .....	10
8	Force Majeure .....	10
9	Intellectual Property Rights .....	11
10	Indemnity .....	11
11	Confidentiality .....	12
12	Termination .....	12
13	Consequences of termination .....	13
14	Data Protection .....	14
15	Equal opportunities .....	16
16	Anti-corruption .....	17
17	Modern Slavery and Human Trafficking .....	18
18	TUPE .....	18
19	General .....	21

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## Parties

- (1) (Company No.) of xx (the **Client** which includes its transferees and assigns as permitted under this deed) (the **Buyer**)
- (2) [ ] (registration number [ ]) whose registered office is at [ ] (the **Provider**)

## Introduction

- (A) The Buyer intends to purchase the Goods from the Provider on the terms and conditions set out in these Conditions.
- (B) *[Insert further information].*

## Agreed terms

### 1 Interpretation

#### 1.1 Definitions

In these Conditions, the following definitions apply:

**Acquired Rights Directive** means the EC Acquired Rights Directive 2001/23/EC;

**Assigned Employee** means any person engaged or employed by the Provider or a Subcontractor in providing the Services who it is expected will be a Returning Employee if he/she remains engaged or employed by the Provider or that Subcontractor until the Provider ceases providing any of the Services under this Contract;

**Business Day** means the Buyer's usual working days, being a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business, or other such days as may be notified to the Provider by the Buyer;

**Buyer** means the Member which issued, and is named, in the Purchase Order;

**Buyer Materials** has the meaning set out in clause 3.3.12;

**Buyer's Premises** means those premises specified in the Purchase Order where the Goods and/or Services are to be Delivered;

**Charges** means the charges payable by the Buyer for the supply of the Services in accordance with clause 6;

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

**Conditions** means these terms and conditions as amended from time to time in accordance with clause 19.9;

**Contract** means the acceptance of a Purchase Order by the Provider and these Conditions and the terms of the Purchase Order, the Specification and any other documents stated to be incorporated in the Purchase Order;

**Data Controller, Data Processor, Data Subject, Personal Data, Process, and Processing** shall have the meaning prescribed under the Data Protection Legislation

**Data Protection Legislation** means the Data Protection Act 2018 (**DPA**) and the General Data Protection Regulation (EU) 2016/679 (**GDPR**) as supplemented or amended from time to time, along with any associated guidance and Codes of Practice

**Data Subject's Rights** means any request exercising rights of a Data Subject pursuant to the Data Protection Legislation.

**Delivery** means the time at which the Goods and/or Services have been delivered to the Buyer's Premises to the reasonable satisfaction of the Buyer and accepted by the Buyer and **Deliver** and **Delivered** shall be construed accordingly;

**Delivery Due Date** means the date by which the Goods and/or Services are required to be Delivered as set out in the Purchase Order or as otherwise determined or extended in accordance with clause 7 and/or clause 8;

**Equal Pay Legislation** means all law preventing pay differentials directly or indirectly on the grounds of sex, gender, maternity or pregnancy except to the extent that such differentials are justified;

**Force Majeure Event** means any act, event, omission, circumstance or accident beyond either party's reasonable control which shall include, but not be limited to:

- (a) acts of God, including but not limited to fire, flood, earthquake, windstorm, epidemic or other natural disaster;
- (b) war, threat of or preparation for war, armed conflict, embargo, breaking off of diplomatic relations, military or non-military interference by any third party state or states, blockade, siege or sanctions or similar actions;
- (c) terrorist acts, civil war, civil commotion or riots;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) fire, explosion or accidental damage;
- (f) loss at sea;
- (g) extreme adverse weather conditions;
- (h) collapse of building structures, failure of plant, machinery, computers or vehicles, or interruption or failure of utility service, including but not limited to electric power, gas or water;

- (i) any labour dispute, including but not limited to strikes, industrial action or lockouts;
- (j) compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law), restraint by court order or public authority and action or non-action by, or failure to obtain the necessary authorisations, or approvals from, any governmental agency or authority which by exercise of due diligence such party could not reasonably have expected to avoid and to the extent which by exercise of due diligence it has been unable to overcome;

**Goods** means all or any of the items set out in the Purchase Order which are to be supplied to the Buyer by the Provider;

**Indemnify** means indemnify on a full indemnity basis;

**Intellectual Property Rights** means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**Liability** means all demands, actions, proceedings, claims, charges, expenses, indebtedness, losses, liability, costs (including internal and administrative costs and professional fees on a “professional and own client” full indemnity basis) and damages;

**Member** means any of, or any combination of:

- i the Client; and
- ii ,subsidiary companies listed;

**Parties** means the Buyer and the Provider;

**Previous Contractor** means the person or organisation providing services equivalent to all or part of the Services before the Provider commences providing the Services;

**Provider** means the person, firm or company named as such on page 1 of the Purchase Order (or its successors in title);

**Purchase Order** means any purchase order placed by the Buyer under which the Provider agrees to supply Goods and/or Services to the Buyer;

**Re-tendering Information** means in relation to any Assigned Employee, full details of that person's:

- identity (or reference number);

- date of birth;
- age;
- sex;
- date of commencement of employment;
- length of service;
- job title; and
- grade and terms and conditions of employment,

together with such other matters as are reasonably requested by the Buyer;

**Returning Employee** means an employee or worker wholly or mainly engaged in providing the Services immediately before the Provider ceases providing any of the Services under this Contract whose employment transfers to a Successor Contractor under TUPE;

**Services** means the Services to be performed by the Provider for the Buyer as described in the Purchase Order and anything created or produced as a result of the Services;

**Specification** means the requirements to which the Goods and/or Services supplied shall conform as detailed in the Purchase Order;

**Subcontractor** means a person or organisation who has a contract with the Service Provider to undertake all or part of the Services;

**Successor Contractor** means a contractor (or the Buyer) that undertakes services equivalent to all or part of the Services after the Provider ceases providing the Services under this Contract;

**Transferring Employees** means an employee or worker who is the subject of a TUPE Transfer;

**TUPE** means the Transfer of Undertakings (Protection of Employment) Regulations 2006; and

**TUPE Transfer** means a “relevant transfer” under TUPE.

## 1.2 Construction

In these Conditions, the following rules apply:

- 1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;

- 1.2.3 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;
- 1.2.4 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
- 1.2.5 a reference to writing or written includes faxes and e-mails.

## 2 **Basis of Contract**

- 2.1 The Purchase Order constitutes an offer by the Buyer to purchase Goods and/or Services from the Provider in accordance with these Conditions. For the avoidance of doubt any Member may issue a Purchase Order.
- 2.2 The Purchase Order shall be deemed to be accepted on the earlier of:
  - 2.2.1 the Provider issuing written acceptance of the Purchase Order; or
  - 2.2.2 any act by the Provider consistent with fulfilling the Purchase Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Each Purchase Order is subject to and shall be deemed to incorporate these Conditions to the exclusion of any other terms that the Provider seeks to impose under any quotation, confirmation of order, delivery note, invoice or similar document. By accepting a Purchase Order the Provider agrees to the application of the Conditions to the Purchase Order. The Parties agree that any other terms or conditions contained or referred to in any correspondence or any documentation submitted by the Provider or elsewhere implied by custom, practice or course of dealing shall not apply, unless expressly agreed in writing by both Parties.
- 2.4 In the event of conflict between any of the documents comprising the Contract, each prevails over or is subordinate to the other(s) in descending order as follows in accordance with the following sequence:
  - 2.4.1 these Conditions;
  - 2.4.2 the Purchase Order;
  - 2.4.3 the Specification;
  - 2.4.4 any other documents stated to be incorporated in the Purchase Order.

## 3 **Supply of Goods and/or Services**

- 3.1 The Provider shall from the date set in the Purchase Order and for the duration of the Contract provide the Goods and/or Services to the Buyer in accordance with the terms of the Contract.

- 3.2 The Provider shall meet the Delivery Due Date and/or any other performance dates for the Goods and/or Services specified in the Purchase Order or notified to the Provider by the Buyer.
- 3.3 In providing the Goods and/or Services, the Provider shall:
- 3.3.1 co-operate with the Buyer in all matters relating to the Goods and/or Services, and comply with all instructions of the Buyer;
  - 3.3.2 perform all Services with the best care, skill and diligence in a timely, efficient and professional manner and in accordance with best practice in the Provider's industry, profession or trade, to the reasonable satisfaction of the Buyer;
  - 3.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Provider's obligations are fulfilled in accordance with this Contract;
  - 3.3.4 warrant that neither the Provider nor any of its officers or employees:
    - (a) have been convicted of any offence involving slavery or human trafficking; and
    - (b) have to the best of the Provider's knowledge, been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery or human trafficking;
  - 3.3.5 ensure that the Goods and/or Services will conform with all descriptions and specifications set out in the Specification, and that they shall be fit for any purpose expressly or impliedly made known to the Provider by the Buyer, and be capable of the required performance;
  - 3.3.6 ensure all advice notes, invoices and packing notes issued by the Provider shall be clearly marked by the Provider with the Provider's name and address, the Purchase Order number, the item code, date of despatch, a description of the Goods and/or Services, the address of their intended destination and the Delivery Due Date;
  - 3.3.7 provide all equipment, tools and vehicles and such other items as are required to provide the Goods and/or Services;
  - 3.3.8 use the best quality goods, materials, standards and techniques, and ensure that all goods and materials supplied and used in the Goods and/or Services or transferred to the Buyer, will be free from defects in workmanship, installation and design;
  - 3.3.9 restore or replace any Goods lost in transit at the Provider's expense and to the Buyer's satisfaction;



- 3.3.10 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
  - 3.3.11 observe all health and safety rules and regulations and any other security requirements that apply at any of the Buyer's premises or any third party premises when the Provider is carrying out Services on behalf of the Buyer;
  - 3.3.12 hold all materials, equipment and tools, drawings, specifications and data supplied by the Buyer to the Provider (**Buyer Materials**) in safe custody at its own risk, maintain the Buyer Materials in good condition until returned to the Buyer, and not dispose or use the Buyer Materials other than in accordance with the Buyer's written instructions or authorisation;
  - 3.3.13 not do or omit to do anything which may cause the Buyer to lose or cause a loss in the value of any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Provider acknowledges that the Buyer may rely or act on the Goods and/or Services; and
  - 3.3.14 take out and maintain appropriate and relevant insurance for the Goods, including, but not limited to, insurance cover for the Goods while in transit.
- 3.4 Before despatching the Goods or commencing provision of the Services, the Provider shall, if appropriate and if previously agreed by the Parties, allow the Buyer to inspect and test the Goods and/or Services for compliance with the Specification and/or any other provisions of the Purchase Order. Without prejudice to clause 4 if in the Buyer's reasonable opinion, the Goods and/or Services do not comply with the Specification, the Buyer shall inform the Provider (in writing unless this is impractical) either of the Buyer's intention to reject the Goods and/or Services, and/or the remedial steps which must be undertaken by the Provider to ensure compliance with the Specification.
- 3.5 Unless otherwise agreed in writing by the Parties and without prejudice to clause 4, if, at any time within three months from Delivery, having regard to the nature of the Goods and/or Services, the Goods and/or Services fail to comply with the Purchase Order, the Buyer may, by notice to the Provider (which notice shall be confirmed in writing) reject the whole or any part of the Goods and/or Services, and/or specify the remedial steps which must be undertaken by the Provider to ensure compliance with the Purchase Order.
- 3.6 If the Buyer requires the Provider to take remedial steps (which for avoidance of doubt may include but shall not be limited to Delivery of replacement Goods and/or Services) the Provider shall do so at its own expense and to the Buyer's satisfaction within the timeframe specified by the Buyer (or where no timeframe is specified, by the period of time originally required for the provision of the Goods and/or Services in the Purchase Order).
- 3.7 If the Buyer rejects the Goods and/or Services pursuant to clause 3.4 or 3.5 (and does not require remedial steps to be taken) and/or the Provider fails to comply with clause 3.6, the Buyer shall be entitled to reject the Goods and/or Services and (without prejudice to clause 4) the following shall apply:

- 3.7.1 the Provider shall not be entitled to any costs nor to any claim against the Buyer for any loss, direct, indirect or otherwise.
- 3.7.2 the Provider shall return any payments made in respect of such Goods and/or Services and/or the Buyer shall be entitled to cancel any future payments in respect of such Goods and/or Services.
- 3.8 The Provider shall deliver the Goods and/or Services as instructed in the Purchase Order and obtain a receipt for them from an authorised officer of the Buyer. Goods shall be deemed not to have been delivered if a receipt from an authorised officer of the Buyer cannot be produced by the Provider.
- 3.9 Any requirements as to the manner, qualities or special requirements for Delivery, specified in the Purchase Order shall be complied with by the Provider.
- 3.10 Title in the Goods and/or Services shall pass to the Buyer upon Delivery, unless otherwise agreed in writing by the Parties. Where the Buyer pays for the Goods and/or Services before Delivery title shall pass on the date of payment. Risk in the Goods and/or Services shall pass three calendar months and one business day after delivery unless otherwise agreed in writing by the Parties.
- 3.11 The Buyer may in its absolute discretion pay for Goods before Delivery and where it does so the Provider shall execute and deliver a vesting certificate to the Buyer in a form acceptable to the Buyer vesting title to the Goods in the Buyer. The Buyer shall not be obliged to pay for such Goods until such vesting certificate has been provided to the Buyer.
- 3.12 The Buyer also reserves the right to take possession of all Goods to which it has title.

#### **4 Buyer remedies**

- 4.1 If the Provider fails to perform the Goods and/or Services by the applicable dates, the Buyer shall, without limiting its other rights or remedies, have one or more of the following rights:
- 4.1.1 to terminate the Contract with immediate effect by giving written notice to the Provider;
- 4.1.2 to refuse to accept any subsequent performance of the Goods and/or Services which the Provider attempts to make;
- 4.1.3 to recover from the Provider any costs incurred by the Buyer in obtaining substitute goods and/or services from a third party;
- 4.1.4 where the Buyer has paid in advance for Goods and/or Services that have not been provided by the Provider, to have such sums refunded by the Provider; or
- 4.1.5 to claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Provider's failure to meet such dates.

4.2 These Conditions shall extend to any substituted or remedial goods and /or services provided by the Provider.

4.3 The Buyer's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

## 5 **Buyer's obligations**

The Buyer shall:

5.1 provide the Provider, by prior agreement, with reasonable access at reasonable times to the Buyer's Premises for the purpose of providing the Goods and/or Services. The Buyer may refuse admission to the Provider's personnel or require such personnel to leave the Buyer's Premises at any time and shall not be obliged to give the Provider the reason(s) for its decision. The Buyer will not apply the provisions of this clause vexatiously. The Purchase Order shall set out any special conditions to be complied with when accessing the Buyer's Premises; and

5.2 provide such information to the Provider as the Provider may reasonably request and the Buyer considers reasonably necessary for the purpose of providing the Goods and/or Services.

## 6 **Charges and payment**

6.1 The Charges for the Goods and/or Services shall be set out in the Purchase Order, and shall be the full and exclusive remuneration of the Provider in respect of the performance of the Goods and/or Services. The prices in the Purchase Order shall apply (without variation) for both the period and/or stated quantity of the Goods and/or Services, unless specifically agreed otherwise in writing by the Parties. Unless otherwise agreed in writing by the Buyer, the Charges shall include every cost and expense of the Provider directly or indirectly incurred in connection with the performance of the Goods and/or Services.

6.2 The Provider shall invoice the Buyer at the times specified in the Purchase Order. Where no time for payment is specified in the Purchase Order the Provider shall invoice the Buyer following Delivery. Each invoice shall include such supporting information reasonably required by the Buyer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

6.3 In consideration of the supply of the Goods and/or Services by the Provider, the Buyer shall pay the invoiced amounts within 30 days of the invoice date in which a valid and undisputed invoice is received unless terms are specifically agreed otherwise.

6.4 All amounts payable by the Buyer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT) unless otherwise stated in the Purchase Order. Where any taxable supply for VAT purposes is made under the Contract by the Provider to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Provider, pay to the Provider such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

- 6.5 If requested to do so by the Buyer, the Provider shall accept payment of monies due by electronic funds transfer through BACS Ltd or other electronic payment means, as a good discharge of the Buyer's indebtedness under the Purchase Order.
- 6.6 The Provider shall maintain complete and accurate records of the time spent and materials used by the Provider in providing the Goods and/or Services, and shall allow the Buyer to inspect such records at all reasonable times on request.
- 6.7 The Provider shall not be entitled to assert any credit, set-off or counterclaim against the Buyer in order to justify withholding payment of any such amount in whole or in part. The Buyer may, without limiting its other rights or remedies, set off any amount owing to it by the Provider against any amount payable by the Buyer to the Provider under the Purchase Order or any other contract between the Parties.

## **7 Delay**

- 7.1 The Provider shall Deliver the Goods and/or Services on the date specified in the Purchase Order. Where no date is specified in the Purchase Order the Provider shall Deliver the Goods within [ ]<sup>1</sup> days of the date of the Purchase Order. It shall contact the Buyer to confirm the date by which the Services are to be Delivered and shall Deliver the Services by such date.
- 7.2 Without prejudice to the Buyer's other rights and remedies under this Contract:
- 7.2.1 the Provider must notify the Buyer of any anticipated or actual delay in Delivery of the Goods and/or Services by the Delivery Due Date immediately, specifying the reasons for the delay;
- 7.2.2 the Provider shall be responsible for any additional costs incurred by the Buyer as a result of delay where the Provider is at fault;
- 7.2.3 the Buyer may extend the Delivery Due Date in its absolute discretion and where it does so it shall confirm to the Provider in writing the extended Delivery Due Date; and
- 7.2.4 if in the reasonable opinion of the Buyer it is inappropriate to reschedule Delivery of the Goods and/or performance of the Services then the Buyer may cancel the Purchase Order without incurring any liability for such a cancellation.

## **8 Force Majeure**

Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by a Force Majeure Event. If a Force Majeure Event delays performance of the Contract then, unless time is of the essence, the Delivery Due Date may be rescheduled by the Buyer (acting reasonably). If a Force Majeure Event prevents the Provider from providing any of the Goods and/or Services for more than two weeks, the Buyer shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Provider.

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<sup>1</sup> Jephson to confirm timescale

## 9 Intellectual Property Rights

- 9.1 In respect of any Goods and/or Services that are transferred to the Buyer under this Contract, the Provider warrants that it has full clear and unencumbered title to all such items, and that at Delivery of such items to the Buyer, it will have full and unrestricted rights to transfer all such items to the Buyer.
- 9.2 Intellectual property and other rights in the Goods and/or Services shall vest in the party from which the Goods and/or Services originate unless the Goods and/or Services are produced for the Buyer as bespoke. If the latter applies, such rights shall vest in the Buyer upon their creation and the Provider shall do all such things and execute all such documents as the Buyer may require in order to perfect such vesting. The Provider shall ensure that it includes corresponding provisions in its contracts with its own sub-contractors or providers.
- 9.3 The Provider shall obtain waivers of all moral rights in the products of the Goods and/or Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 9.4 The Provider shall, promptly at the Buyer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Buyer may from time to time require for the purpose of securing for the Buyer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Buyer in accordance with clause 9.2.
- 9.5 All Buyer Materials are the exclusive property of the Buyer.

## 10 Indemnity

- 10.1 The Provider shall keep the Buyer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Buyer as a result of or in connection with:
- 10.1.1 any claim made against the Buyer by a third party arising out of, or in connection with, the supply of the Goods and/or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Provider, its employees, agents or subcontractors; and
- 10.1.2 any claim brought against the Buyer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Goods and/or Services, unless the Buyer is responsible for the breach in question.
- 10.2 The Provider shall maintain in force, with a reputable insurance company, professional indemnity insurance (for a period of 6 years when the Purchase Order is executed under hand and for a period of 12 years when the Purchase Order is executed as a deed) and public liability insurance (for the duration of the Contract) to cover the liabilities that may arise under or in connection with the Contract and shall, on the

- Buyer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 10.3 Neither party excludes or limits liability to the other for death or personal injury as a result of its negligence.
- 10.4 This clause 10 shall survive termination of the Contract.

## 11 **Confidentiality**

- 11.1 Subject to legislative requirements, both Parties shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to, or otherwise obtained by, either party by the other party, its employees, agents or subcontractors, and any other confidential information concerning the other party's business or its products or its Goods and/or Services. The party receiving confidential information shall restrict disclosure of such information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging its obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the receiving party.
- 11.2 Upon request, and at any event upon expiry or termination of the Purchase Order for whatever reason, the Provider shall either immediately destroy, or at the Buyer's written request, immediately return to the Buyer any confidential information provided to it pursuant to the Purchase Order.
- 11.3 This clause 11 shall survive termination of the Contract.

## 12 **Termination**

- 12.1 Without limiting its other rights or remedies, the Buyer may terminate the Contract with immediate effect by giving written notice to the Provider if:
- 12.1.1 the Provider commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing of the breach;
- 12.1.2 the Provider 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) 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;
- 12.1.3 the Provider 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 the Provider with one or more other companies or the solvent reconstruction of the Provider;

- 12.1.4 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 Provider (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;
  - 12.1.5 the Provider (being an individual) is the subject of a bankruptcy petition order;
  - 12.1.6 a creditor or encumbrancer of the Provider 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;
  - 12.1.7 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 Provider (being a company);
  - 12.1.8 a floating charge holder over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 12.1.9 a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
  - 12.1.10 any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1.2 to clause 12.1.9 (inclusive);
  - 12.1.11 the Provider is found to have committed any offence involving slavery or human trafficking;
  - 12.1.12 the Provider suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
  - 12.1.13 the Provider (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 12.2 Without limiting its other rights or remedies, the Buyer may terminate the Contract by giving the Provider **one month's** written notice.

### 13 **Consequences of termination**

On termination of the Contract for any reason:

- 13.1 the Provider shall immediately deliver to the Buyer all Buyer Materials and those Goods which the Buyer has already paid for and to which title has already passed to the Buyer. If the Provider fails to do so, then the Buyer may enter the Provider's

premises and take possession of them. Until they have been returned or delivered, the Provider shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

- 13.2 the accrued rights, remedies, obligations and liabilities 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;
- 13.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect; and
- 13.4 the Buyer shall not be obliged to pay the Provider for any Goods and/or Services ordered pursuant to a Purchase Order but not yet Delivered to the Buyer; and
- 13.5 the Provider shall not be entitled to any claim against the Buyer in respect of any actual or expected loss of profit, loss of revenue, loss of goodwill or loss of opportunity and/or for any consequential or indirect loss whatsoever.

#### 14 **Data Protection**

- 14.1 The Provider shall at all times comply with the provisions and obligations imposed by the Data Protection Legislation and shall indemnify the Buyer and keep it indemnified against all actions, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses) whatsoever in respect of any breach of this clause 14 which causes the Buyer to be in receipt of any actions, claims, demands, proceedings and/or incur any damages costs, charges and/or expenses (including If reasonable legal expenses).
- 14.2 The Provider shall ensure that, to the extent that it stores and processes Personal Data in connection with its appointment under the Contract, it shall comply with the provisions and obligations imposed on it by the Data Protection Legislation, including obtaining all necessary registrations, notifications and consents.
- 14.3 The Buyer will:
  - 14.3.1 act in the capacity of Data Controller of any of the Buyer's or third party Personal Data accessed and/or processed by the Provider; and
  - 14.3.2 be responsible to third parties for such data, including the individuals to whom the Personal Data relates.
- 14.4 As Data Processor the Provider shall at all times in respect of the Personal Data Processed under the Contract:
  - 14.4.1 warrant and undertake to implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing, destruction, loss or alteration and to assist the Buyer with its obligations in respect of the Data Subject's Rights;
  - 14.4.2 Process the Personal Data only to the extent and in such a manner as is necessary for discharging its obligations under the Contract or as otherwise permitted by the Buyer in writing;



- 14.4.3 inform the Buyer of any legal requirement to Process the Personal Data outside of the terms of the Contract, prior to that Processing taking place, unless the law prohibits such disclosure on the grounds of public interest;;
  - 14.4.4 at the Buyer's request, securely delete or return all Personal Data (including copies) once the purpose for which it was shared by the Buyer with the Provider is satisfied and there is no longer a need for the Provider to retain the Personal Data;
  - 14.4.5 not engage another Data Processor without prior written authorisation from the Buyer, and ensuring compliance with any conditions attached to such authorisation including a requirement for the Data Processor to comply with the same terms as set out in this Clause 14; and
  - 14.4.6 not cause or permit the Personal Data to be transferred outside the European Union without the prior written consent of the Buyer..
- 14.5 The Provider shall not disclose the Personal Data to any third parties other than as permitted under the Contract and this clause 14 save that it shall be entitled to disclose the Personal Data to its employees agents or officers as reasonably necessary in order to perform its obligations under the Contract only to the extent that the Provider ensures the reliability of such persons:
- 14.5.1 being under an obligation of confidentiality;
  - 14.5.2 having undertaken training in Data Protection Legislation; and
  - 14.5.3 understanding the obligations upon the Provider in relation to the Personal Data.
- 14.6 The Buyer shall on giving reasonable notice to the Provider be entitled to audit the Provider's procedures which shall include the right to enter the Provider's premises and/or view its systems for the purposes of ensuring compliance with this clause 14 and to take any reasonable steps to satisfy the Buyer that the Provider is so complying.
- 14.7 The Provider will at the Buyer's request from time to time prepare a report as to the Provider's technical and organisational procedures in place to protect third party Personal Data.
- 14.8 In the event that the Provider becomes aware of or suspects any accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, the Personal Data or any other contravention of this clause 14, the Provider shall:
- 14.8.1 record the details of the suspected incident in a security incident log and immediately undertake an initial investigation into the suspected incident;
  - 14.8.2 promptly, and within no later than 24 hours of becoming aware of the event, give written notice to the Buyer with full details of such contravention; and
  - 14.8.3 take no further steps in relation to the same until such time that it receives written instructions to do so from the Buyer.

14.9 The Provider shall fully co-operate with the Buyer in the course of any investigation undertaken by the Buyer and any subsequent corrective actions arising therefrom, including but not limited to any report to and investigation by the Information Commissioner's Office and/or notification to any affected individuals, and implement any measure necessary to restore the security and integrity of any compromised Personal Data.

14.10 The Provider shall notify the Buyer within two (2) Business Days if it receives

14.10.1 a request to exercise the Data Subject's Rights; or

14.10.2 a complaint or request relating to the Buyer's obligations under the Data Protection Legislation

and shall take no further steps in relation to the same until such time that it receives written instruction to do so from the Buyer.

14.11 The Provider will provide data processed under the Provider's appointment under the Contract in its possession as requested by the Buyer from time to time in accordance with the timescale the Buyer specifies. Where the Buyer requests data for the purpose of complying with a request to exercise the Data Subject's Rights, the Provider will retrieve the relevant data and provide the Buyer a full copy of such as soon as is possible but in any event within five Business Days of such a request being made.

14.12 The Provider will co-operate and provide reasonable assistance with any proceedings or inquiry by the Buyer, and/or the Information Commissioner or other body authorised by statute which are concerned with the Data Protection Legislation in connection with data processed under the Provider's appointment under the Contract.

## 15 **Equal opportunities**

15.1 The Provider acknowledges that the Buyer has duties under section 149 of the Equality Act 2010 (the **Equality Act**) to have due regard to the need to eliminate discrimination, harassment and any other conduct prohibited by the Equality Act and to promote equality of opportunity and foster good relations between persons sharing a protected characteristic and those who do not share it. For the purposes of this duty (the Equality Duty) the protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

15.2 The Provider warrants that it will not and shall procure that its sub consultants and sub-contractors will not through its or their conduct or practices cause the Buyer to be in breach of any of the obligations placed upon the Buyer by section 149 of the Equality Act having due regard to any statutory code of practice issued in relation to that duty and will indemnify the Buyer for any loss, expense or damage incurred as a result of any breach of such obligations.

15.3 The Provider acknowledges that the Buyer by regulation may be subject to duties in accordance with section 153 of the Equality Act.

- 15.4 The Provider warrants that it will not and shall procure that its sub consultants and sub-contractors will not through its or their conduct or practices cause the Buyer to be in breach of any of the obligations placed upon the Buyer under any duty imposed by any regulation issued under section 153 of the Equality Act and will indemnify the Buyer for any loss, expense or damage incurred as a result of any breach of such obligations.
- 15.5 The Buyer may have regard to its statutory duties under the Equality Act and/or by any regulation issued under section 153 of the Equality Act and having due regard to any statutory code of practice issued in relation to those statutory duties, make requests or issue instructions to the Provider (relating to the supply of information, monitoring and other matters) for the purposes of ensuring that the Provider's conduct or practices or those of its sub consultants and sub-contractors will not result in the Buyer being in breach of its obligations under the Equality Act. The Provider shall procure that its sub consultants and sub-contractors will provide the Buyer with all information reasonably requested by the Buyer to allow the Buyer to monitor compliance with the obligations imposed by this clause 15.
- 15.6 Without prejudice to the generality of this clause 15 the Buyer may:
- 15.6.1 require the Provider to comply and procure that its sub consultants and sub-contractors comply at no cost to the Buyer with the Buyer's policies relating to the Equality Duty (which shall be made available on request); and/or
  - 15.6.2 to have policies in place (which have been approved by the Buyer) with which the Provider will comply and procure that its sub consultants and sub-contractors comply.

## 16 **Anti-corruption**

- 16.1 For the purposes of these Conditions, "Corrupt Activity" means bribery and/or corruption including without limitation any activity, practice or conduct which would or could constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 (Bribery Act) whether in connection with the provision of the Goods and/or the performance of the Services or otherwise.
- 16.2 The Provider undertakes to the Buyer that:
- 16.2.1 the Provider has not and its current and former directors, officers and employees have not and shall not engage in any Corrupt Activity;
  - 16.2.2 the Provider has not and its current and former directors, officers and employees have not and shall not engage in any activity, practice or conduct which could or would place the Buyer in breach of section 7(1) of the Bribery Act;
  - 16.2.3 the Provider has and shall maintain and implement procedures to ensure compliance with clauses 16.2.1 and 16.2.2 and adequate procedures designed to prevent any Associated Person (as that term is defined in the

Bribery Act) from undertaking any Corrupt Activity and/or conduct that would give rise to an offence under section 7 of the Bribery Act; and

16.2.4 from time to time, at the Buyer's reasonable request, the Provider will confirm in writing that the Provider has complied with its undertakings under clauses 16.2.1 to 16.2.3 and will provide any information reasonably requested by the Buyer in support of such compliance.

16.3 The Provider shall indemnify the Buyer against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Buyer as a result of any breach of clause 16.2.

16.4 The Parties agree that any breach by the Provider of this clause 16 shall be a material breach which is not remediable under clause 12.1.1 of these Conditions and that the Buyer may terminate this Contract with immediate effect by giving written notice to the Buyer in accordance with clause 12.

## 17 **Modern Slavery and Human Trafficking**

17.1 The Provider shall take appropriate steps to ensure that there is no slavery or human trafficking in its supply chains and in connection with this the Provider shall:

17.1.1 implement due diligence procedures for its subcontractors;

17.1.2 require all subcontractors to warrant that, neither the subcontractor nor any of the subcontractor's officers or employees;

(a) have been convicted of any offence involving slavery or human trafficking; or

(b) have, to the best of the subcontractor's knowledge, been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking; and

17.1.3 require all subcontractors to include provisions having the same effect as in this clause 17 in all subcontracts (at any stage of remoteness from the Buyer in the supply chain) relating to the Goods and/or the performance of the Services.

## 18 **TUPE**

### 18.1 **TUPE – in**

18.1.1 Where TUPE applies on the commencement of this Contract, the date on which the Provider commences providing the Services in accordance with the terms of the Contract will be the date of the TUPE Transfer. On that date the contracts of employment of any Transferring Employees are to have effect (subject to Regulation 4(7) of TUPE) as if originally made between the Transferring Employees and the Provider, except in so far as

those contracts relate to an occupational pension scheme relating to old age, invalidity and survivors' benefits.

- 18.1.2 The Buyer assigns to the Provider the benefit of any indemnity in favour of the Provider (as the successor to any Previous Contractor) under any previous contracts to provide services equivalent to all or part of the Services.
- 18.1.3 The Provider agrees to Indemnify the Buyer, and at the Buyer's request, any Previous Contractor against all Liability (arising before or after the Provider commences providing the Services):
- (a) to any person who is or has been employed or engaged by the Provider or any Subcontractor as a result of any act, fault or omission of the Provider and/or any Subcontractor after the Provider commences providing the Services (as applicable);
  - (b) to a Transferring Employee, trade union or staff association or employee representative arising from any failure by the Provider and/or any Subcontractor to comply with any legal obligation under any of Regulations 13, 14 or 15 of TUPE, under the Acquired Rights Directive or otherwise;
  - (c) arising from any claim that the change of identity of employer occurring under TUPE to the Provider or the relevant Subcontractor is significant and detrimental to any Transferring Employee or to any person who would have been a Transferring Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the date the Provider commences providing the Services (as applicable) as a result of the change in employer;
  - (d) arising from the Provider's or a Subcontractor's proposed or actual change to a Transferring Employee's working conditions, terms or conditions or any measures proposed by the Provider or the relevant Subcontractor which are to the material detriment of any Transferring Employee or any person who would have been a Transferring Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the date the Provider commences providing the Services as a result of any such proposed changes or measures; or
  - (e) arising out of any negligent or other misrepresentation or mis-statement, made by the Provider or any Subcontractor to the Transferring Employees or their representatives.
- 18.1.4 Where the Provider or a Subcontractor is providing Services to the Buyer, the Provider shall at least every 3 months supply the Buyer with a list of all the Assigned Employees and their roles.

## 18.2 TUPE Re-tendering Information

18.2.1 Within the 12 (twelve) months immediately preceding the date on which the Provider shall cease providing the Services or any of them in accordance with the terms of the Contract and following service of a notice of termination under Clause 12 the Provider must:

- (a) provide Re-tendering Information at no cost to the Buyer within a maximum of 10 (ten) Business Days of a request;
- (b) notify the Buyer in writing of any material changes to the Re-tendering Information promptly as and when such changes arise;
- (c) ensure that neither the Provider nor any Subcontractors without the Buyer's prior written consent:
  - i make any material increase or decrease in the numbers of Assigned Employees;
  - ii increase the remuneration or otherwise change the terms of employment or engagement of the Assigned Employees;
  - iii transfer any of the Assigned Employees to another part of their business or move other employees from elsewhere in their business who have not previously been employed or engaged in providing the Services; or
  - iv form or alter any organised group of the Assigned Employees.

18.2.2 The Provider agrees to Indemnify the Buyer and at the Buyer's request any Successor Contractor, against all Liability from:

- (a) the Provider or a Subcontractor failing to provide the Buyer with any Re-tendering Information promptly; or
- (b) any material inaccuracy in or omission from the Re-tendering Information.

### 18.3 **TUPE transfer to a Successor Contractor**

18.3.1 The Buyer and Provider intend TUPE to apply to the provision of any services equivalent to the Services or any of them after the Provider ceases providing the Services or any of them under this Contract but the position is to be determined in accordance with the law on the date when the Provider ceases providing the Services or any of them under this Contract.

18.3.2 Upon ceasing to provide the Services or any of them under this Contract the Provider must:

- (a) ensure that all financial obligations including wages, salaries and other benefits and all related PAYE, tax, deductions, pension contributions and National Insurance contributions in respect of the employment of the Returning Employees are satisfied up to the date

when the Provider ceases providing the Services under this Contract;

- (b) remain (or ensure that Subcontractors remain) responsible for all the Provider's or Subcontractor's employees or workers who are not Returning Employees;
- (c) Indemnify the Buyer and any Successor Contractor against all Liability incurred from any claim:
  - i by or on behalf of any of the Provider's or Subcontractor's employees or workers who are not Returning Employees;
  - ii by or on behalf of any of the Returning Employees in respect of the period on or before the date when the Provider ceases providing any of the Services under this Contract (whether any such claim arises before, on or after this date) except to the extent that any loss results from any failure by the Buyer or any Successor Contractor to comply with Regulation 13(4) of TUPE;
  - iii by or on behalf of any of the Returning Employees under Equal Pay Legislation which is referable to the period before the date when the Provider ceases providing any of the Services under this Contract (including a claim made after this date arising out of circumstances which arose before this date).

18.3.3 The Buyer may assign the benefit of any or all of the indemnities in Clause 18.1.2, Clause 18.2.2, Clause 18.3.2 and Clause 18.4.2 to a Successor Contractor.

#### 18.4 **TUPE and Subcontractors**

18.4.1 The Provider must:

- (a) obtain Indemnities from and impose obligations on its Subcontractors in the same terms as those applying to the Provider under Clause 18.1.3, Clause 18.2 and Clause 18.3; and
- (b) ensure that the Subcontractors comply with those obligations.

18.4.2 The Provider agrees to Indemnify the Buyer against all Liability incurred by the Buyer or any Successor Contractor resulting from the Provider's failure to comply with Clause 18.4.1.

### 19 **General**

#### 19.1 **Assignment and subcontracting**

19.1.1 The Provider shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Buyer.

- 19.1.2 The Buyer may at any time assign, transfer, 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 or agent.

## 19.2 Notices

- 19.2.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- 19.2.2 Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at [9.00 am] on the [second] Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- 19.2.3 This clause 19.2 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

## 19.3 Waiver and cumulative remedies

- 19.3.1 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 preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 19.3.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

## 19.4 Severance

- 19.4.1 If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 19.4.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.



**19.5 No partnership**

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the Parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

**19.6 Third parties**

19.6.1 Subject to clause 19.6.2, the Contract between the Parties does not confer (and is not intended to confer) any rights on any third party, whether pursuant to the Contracts (Rights of Third Parties) Act 1999, or otherwise.

19.6.2 A Member may bring a claim under this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise in relation to any Purchase Order issued by that Member.

**19.7 Inducement**

The Provider shall not do anything, or omit to do anything, which may be considered to be an inducement to any employee of the Buyer. Any such inducement shall be deemed to be a breach, which shall be considered incapable of remedy. The Provider shall report any request for an inducement to the Buyer.

**19.8 Publicity**

The Provider shall not, without the prior written consent of the Buyer, advertise or disclose to any third party that it is providing Goods and/or Services to the Buyer.

**19.9 Variation**

Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Buyer.

**19.10 Entire Agreement**

These Conditions and the Purchase Order shall (unless expressly agreed otherwise in writing by the Parties) comprise out the entire terms and conditions of the contract in relation to the subject matter of the Purchase Order (subject to clause 1.1). The Purchase Order and these Conditions shall therefore take priority over any other arrangements, communications (whether verbal or written) or any other documents (including, but not limited to, other Purchase orders, or other terms and conditions) except if the Purchase Order is displaced pursuant to an overriding contract pertaining to the Goods and/or Services either issued by, or referred to, by the Buyer.

**19.11 Governing law and jurisdiction**

The 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, English law, and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.



These Conditions have been executed as a deed and are delivered and take effect on the date stated at the beginning of it.

**THE COMMON SEAL of**

**Xx LIMITED**

was hereunto affixed in execution of this deed

in the presence of:

Authorised Signatory

Authorised Signatory

Executed as a deed by [**PROVIDER**] )  
acting by two directors / a director and its )  
company secretary )

Signed :

Print name :

Director

Signed :

Print name :

Director / company secretary