

## **Framework terms and conditions for the purchase of goods and/or services by Display Creatives UK Limited concerning point of sale and point of purchase material**

### **1. Interpretation**

The following definitions and rules of interpretation apply in these Conditions.

#### **1.1 Definitions:**

**Background IPRs:** (a) Intellectual Property Rights owned by a party or licensed by a third party to a party before a Contract comes into existence; (b) Intellectual Property Rights created by a party or licensed by a third party to a party independently of a Contract; and (c) any Intellectual Property Rights that are derivative of either category (a) or (b) above.

**Brands:** any brand owned by or licensed to the Customer.

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

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 17.9.

**Contract:** each contract between the Customer and the Supplier for the supply of Goods and/or Services from time to time in accordance with these Conditions.

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.

**Customer:** Display Creatives UK Limited registered in England and Wales with company number 03205131.

**Customer Background IPRs:** the Background IPR of the Customer.

**Customer Materials:** has the meaning set out in clause 5.3(j).

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic

communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**Deliverables:** all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**Delivery Location:** has the meaning given in clause 4.2(b).

**Developments:** all Intellectual Property Rights that arise out of, relate to, result from, or are first made, developed, conceived of or reduced to practice by the Supplier under a Contract that are of general application and not created specifically and solely for use by the Customer but are not derivative of any Customer Background IPRs.

**Goods:** the goods (or any part of them) set out in an Order or otherwise provided as part of Services.

**Goods Specification:** any specification for Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

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

**Order:** each order by the Customer for the supply of Goods and/or Services from time to time, as set out in the Customer's purchase order form or in the Customer's written acceptance of the Supplier's quotation.

**Order Specific IPRs:** all those Intellectual Property Rights developed by or for the Supplier under a Contract that are specifically and solely for use by the Customer in connection with receipt of Services, including any Deliverables, but excluding any Supplier Background IPRs and Developments.

**Services:** the services, including any Deliverables, to be provided by the Supplier under a Contract as set out in a Service Specification.

**Service Specification:** any description or specification for Services agreed in writing by the Customer and the Supplier.

**Supplier:** the person or firm from whom the Customer purchases Goods and/or Services.

**Supplier Background IPR:** the Background IPR of the Supplier.

**TUPE Regulations:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/46*) (as amended).

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((*EU*) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) (as amended).

## 1.2 Interpretation:

- (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 and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes fax and email.
- (f) Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020.

## 2. Basis of contract

**2.1** An Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

**2.2** An Order shall be deemed to be accepted on the earlier of:

- (a) the Supplier issuing written acceptance of the Order; or
- (b) any act by the Supplier consistent with fulfilling the Order,

at which point and on which date a Contract shall come into existence (**Commencement Date**).

**2.3** These Conditions apply to each Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

**2.4** All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

### **3. Supply of Goods**

**3.1** The Supplier shall ensure that Goods shall:

- (a) correspond with their description and any applicable Goods Specification;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;
- (c) where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery, unless otherwise specified; and
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of those Goods.

**3.2** The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under a Contract in respect of the associated Goods.

**3.3** The Customer may inspect and test Goods at any time before delivery. The Supplier shall remain fully responsible for Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the associated Contract.

**3.4** If following such inspection or testing the Customer considers that Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

**3.5** The Customer may conduct further inspections and tests after the Supplier has carried out its remedial actions.

### **4. Delivery of Goods**

**4.1** The Supplier shall ensure that:

- (a) Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b) each delivery of Goods is accompanied by a delivery note which shows the date of the associated Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (c) it states clearly on the delivery note any requirement for the Customer to return any packaging material for Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

**4.2** The Supplier shall deliver Goods:

- (a) on the date specified in the associated Order or, if no such date is specified, as directed by the Customer;
- (b) to such location as is set out in the associated Order or as instructed by the Customer before delivery (**Delivery Location**); and
- (c) during the Customer's normal hours of business on a Business Day, or as instructed by the Customer.

**4.3** Delivery of Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

**4.4** The Supplier shall not deliver Goods in instalments without the Customer's prior written consent. Where it is agreed that Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 6.1.

**4.5** Title and risk in Goods shall pass to the Customer on completion of delivery.

**5. Supply of Services**

**5.1** The Supplier shall from the Commencement Date and for the duration of the associated Contract supply Services to the Customer in accordance with the terms of the Contract.

**5.2** The Supplier shall meet any performance dates for Services specified in the associated Order or that the Customer notifies to the Supplier and time is of the essence in relation to any of those performance dates.

**5.3** In providing Services, the Supplier shall:

- (a) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the associated Contract;
- (d) ensure that the Services will conform with all descriptions, standards and specifications set out in the associated Service Specification, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- (h) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services;
- (i) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises and any Delivery Location;
- (j) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- (k) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services; and
- (l) comply with any additional obligations as set out in the associated Service Specification.

## **6. Customer remedies**

**6.1** If the Supplier fails to deliver Goods by the applicable date or to perform Services by the applicable date, or both, the Customer shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights and remedies:

- (a) to terminate the associated Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of Services and/or delivery of Goods which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
- (d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
- (e) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.

**6.2** If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights and remedies, whether or not it has accepted the Goods:

- (a) to terminate the associated Contract with immediate effect by giving written notice to the Supplier;
- (b) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to refuse to accept any subsequent delivery of Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with clause 3.1.

**6.3** If the Supplier has supplied Services that do not comply with the requirements of clause 5.3(d) then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights and remedies:

- (a) to terminate the associated Contract with immediate effect by giving written notice to the Supplier;
- (b) to return the Deliverables to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);
- (d) to refuse to accept any subsequent performance of Services which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute services or deliverables from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to comply with clause 5.3(d).

**6.4** These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

**6.5** The Customer's rights and remedies under a Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

## **7. Customer's obligations**

**7.1** The Customer shall:

- (a) provide the Supplier with reasonable access at reasonable times to the Customer's premises and other relevant premises for the purpose of delivering Goods and/or providing Services; and
- (b) provide such necessary information for the delivery of Goods and/or provision of Services as the Supplier may reasonably request.

## **8. Charges and payment**

**8.1** The price for Goods:

- (a) shall be the price set out in an Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the associated Commencement Date; and
- (b) shall be inclusive of the costs of packaging, insurance and carriage of Goods. No extra charges shall be effective unless agreed in writing and signed by the Customer.

**8.2** The charges for Services shall be set out in an Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of Services. Unless



otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of Services.

- 8.3** In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services unless otherwise set out in the Order. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 8.4** In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall pay the invoiced amounts within 45 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 8.5** All amounts payable by the Customer under a Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under a 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 Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 8.6** If the Customer fails to make a payment due to the Supplier under a Contract by the due date, then the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 8.7** The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing Services, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.
- 8.8** The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under a Contract. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under a Contract or otherwise.

## **9. Intellectual property rights and data protection**

- 9.1** The Supplier hereby assigns to the Customer with full title guarantee, free of all encumbrances and third party rights all rights, title and interest to any Order Specific

IPRs that may be developed in the course of the performance of Services. The assignment shall be a present assignment of future rights that shall take effect immediately upon the coming into existence of the relevant Order Specific IPRs. The Customer acknowledges and agrees that all Developments will be the property of the Supplier, and the Customer hereby assigns to the Supplier all of its rights, title and interest (if any) to any Developments. The assignment shall be a present assignment of future rights that shall take effect immediately upon the coming into existence of the relevant Development.

- 9.2** The Customer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable, revocable licence for the duration of a Contract for the sole purpose of performing the associated Services of the Order Specific IPRs, the Customer Materials and any Brands.
- 9.3** The Supplier will follow all directions, guidelines and/or restrictions relating to the Supplier's use of any Brands as notified to the Supplier in writing by the Customer from time to time.
- 9.4** The Supplier hereby grants to the Customer a royalty-free, non-exclusive, non-transferable, irrevocable licence for the Customer, or any third parties on its behalf, to use, copy, install, maintain, modify, enhance and adapt for its own business purposes any Developments (and/or pursuant to clause 9.5, Supplier Background IPR), to the extent such licence is necessary for the Customer to receive the full benefit of the associated Services.
- 9.5** The Supplier warrants, represents and undertakes that the Customer shall not require the use of any Supplier Background IPRs to receive the benefit of the Services, unless the Supplier has otherwise notified the Customer of certain Supplier Background IPR (in which case such Intellectual Property Rights will be licensed to the Customer on the same terms as Developments are licensed under clause 9.4).
- 9.6** Both parties will comply with all applicable requirements of the Data Protection Legislation. The obligations regarding data protection in this clause 9 are in addition to, and do not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 9.7** The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor. The Schedule at the end of these Conditions sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.

**9.8** Without prejudice to the generality of clause 9.6, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of a Contract.

**9.9** Without prejudice to the generality of the obligations regarding data protection in this clause 9, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under a Contract:

- (a) process that personal data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on the laws of a member of the European Union or European Union Law as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer. In this clause 9, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- (d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;

- (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
- (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a personal data breach;
- (g) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of a Contract unless required by Applicable Law to store the personal data;
- (h) maintain complete and accurate records and information to demonstrate its compliance with its data protection obligations in this clause 9 and allow for audits by the Customer or the Customer's designated auditor of such records and information and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation; and
- (i) indemnify the Customer against any loss or damage suffered by the Customer in relation to any breach by the Supplier of its data protection obligations in this clause 9.

**9.10** The Customer does not consent to the Supplier appointing any third party processor of personal data under a Contract without its prior written consent. Any such consent will only be provided on the condition that the Supplier will enter into a written agreement with the third party processor incorporating data protection terms which are substantially similar to those set out in this clause 9 and which the Supplier undertakes reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 9.10.

**9.11** Either party may, at any time on not less than 30 days' notice, revise the data protection terms in this clause 9 by replacing them with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.

## **10. Indemnity**

**10.1** The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential

losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:

- (a) any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of Goods, or receipt, use or supply of Services (excluding Customer Materials);
- (b) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, as delivered, or Deliverables; and
- (c) any claim made against the Customer by a third party arising out of or in connection with the supply of Goods, as delivered, or Services.

**10.2** This clause 10 shall survive termination of a Contract.

## **11. Insurance**

During the term of a Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Customer'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.

## **12. Confidentiality**

**12.1** Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.

**12.2** Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under a Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information must comply with this clause 12; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**12.3** Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under a Contract.

### **13. Termination**

**13.1** Without affecting any other right or remedy available to it, the Customer may terminate a Contract:

- (a) with immediate effect by giving written notice to the Supplier if:
  - (i) there is a change of control of the Supplier; or
  - (ii) the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
  - (iii) the Supplier commits a breach of clause 5.3(h); and
- (b) for convenience by giving the Supplier 1 months' written notice.

**13.2** Without affecting any other right or remedy available to it, either party may terminate a Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

### **14. Consequences of termination**

**14.1** On termination of a Contract, the Supplier shall immediately deliver to the Customer all associated Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

**14.2** Termination or expiry of a Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, 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.

**14.3** Any provision of a Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

**15. Force majeure**

Neither party shall be in breach of a Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.

**16. Restrictions**

**16.1** In order to protect the legitimate interests of the Customer and each of its group companies, the Supplier covenants with the Customer for itself and as an agent of each of its group companies that it shall not (except with the prior written consent of the Customer):

- (a) attempt to solicit or entice away from the employment or service of the Customer or any of its group companies the services of any Restricted Person other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the Customer or any of its group companies;
- (b) solicit or entice away from the employment or service of the Customer or any of its group companies the services of any Restricted Person other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the Customer or any of its group companies; or
- (c) employ or engage or otherwise facilitate the employment or engagement of any Restricted Person.

**16.2** The Supplier shall be bound by the covenant set out in clause 16.1 above during the term of each Contract, and for a period of 12 months after termination or expiry of each Contract.

**16.3** For the purposes of clause 16.1 above, a **Restricted Person** shall mean any firm, company or person employed or engaged by the Customer or any of its group companies during the term of a Contract with whom the Supplier has been engaged in respect of the provision of Goods and/or Services under the Contract or the management of the Contract either as principal, agent, employee, independent contractor or in any other form of employment or engagement and who could damage the interests of the Customer if they were involved in any capacity in any business concern which competes with the business of the Customer.

- 16.4** If the Supplier commits a breach of clause 16.1 above, it shall on demand pay to the Customer or its relevant group company a sum equal to one year's basic salary or the annual fee that was payable by the Customer or its relevant group company to the Restricted Person plus the recruitment costs incurred by the Customer or its relevant group company in replacing such person. The parties confirm that these liquidated damages are reasonable and proportionate to protect the legitimate interest of the Customer or its relevant group company.
- 16.5** In order to protect the legitimate business interests of the Customer and each of its group companies, the Supplier covenants with the Customer for itself and as agent for each of its group companies that it shall not (except with the prior written consent of the Customer):
- (a) solicit or entice away (or attempt to solicit or entice away) from the Customer or any of its group companies the business or custom of a Restricted Customer; or
  - (b) be involved in the provision of services to a Restricted Customer.
- 16.6** The Supplier shall be bound by the covenant set out in clause 16.5 above during the term of each Contract, and for a period of 12 months after termination or expiry of each Contract.
- 16.7** For the purposes of clause 16.5 above, a **Restricted Customer** shall mean any firm, company or person who is or has at any time during the immediately preceding 12 months been a customer or prospective customer of, or in the habit of dealing with, the Customer or any of its group companies and with whom the Supplier has been engaged in respect of the provision of Goods and/or Services under a Contract.

## **17. General**

**17.1 TUPE.** The Supplier and the Customer acknowledge and agree that, in relation to each Contract, they do not expect the TUPE Regulations to apply when the Supplier commences and ceases performance under the Contract. The Supplier and the Customer shall organise themselves and delivery under the Contract accordingly.

### **17.2 Assignment and other dealings.**

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



### **17.3 Notices.**

- (a) Any notice given to a party under or in connection with a Contract shall be in writing and shall be:
  - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (ii) sent by fax to its main fax number or sent by email to its main email address.
- (b) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - (ii) 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 or at the time recorded by the delivery service; and
  - (iii) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 17.3(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause 17.3 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**17.4 Severance.** If any provision or part-provision of a 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 17.4 shall not affect the validity and enforceability of the rest of a Contract.

**17.5 Waiver.** A waiver of any right or remedy under a Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under a Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under a Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**17.6 No partnership or agency.** Nothing in a Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the

agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

**17.7 Entire agreement.** A Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**17.8 Third party rights.**

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

(b) The rights of the parties to rescind or vary a Contract are not subject to the consent of any other person.

**17.9 Variation.** Except as set out in these Conditions, no variation of a Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

**17.10 Conflict.** If there is an inconsistency between any of the provisions of these Conditions and the provisions of an Order, the provisions of the Order shall prevail.

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

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

**Schedule – Processing, Personal Data and Data Subjects**

**1. Processing by the Supplier**

**1.1 Scope, nature and purpose of processing**

The scope, nature and purpose of the processing is the provision of Goods and/or Services under a Contract.

**1.2 Duration of the processing**

The duration of the processing corresponds to the duration of the relevant Contract.

## 2. Types of Personal Data

- **Identity Data** including first name, maiden name, last name, username or similar identifier, marital status, title and gender.
- **Contact Data** including billing address, delivery address, email address and telephone numbers.
- **Financial Data** including bank account and payment card details.
- **Transaction Data** including details about payments to and from a data subject and other details of goods and services a data subject has purchased.
- **Technical Data** including internet protocol (IP) address, a data subject's login data, browser type and version, time zone setting and location, browser plug-in types and versions, operating system and platform and other technology on the devices a data subject uses to access the systems of the Customer.
- **Profile Data** including a data subject's username and password, and purchases or orders made by a data subject.
- **Usage Data** including information about how a data subject uses the systems of the Customer.

## 3. Categories of data subject

- The Customer's employees and employees of other companies in its group.
- The Customer's clients and customers and potential clients and customers.
- Employees of the Customer's clients and customers and potential clients and customers.
- The Customer's business partners.
- Employees of the Customer's business partners.
- The Customer's suppliers and sub-contractors.
- Employees of the Customer's suppliers and sub-contractors.
- Individuals identified in documents processed by the Customer in providing goods or services to its clients and customers.