

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

The Customer's attention is particularly drawn to the provisions of clause 12 (Limitation of liability).

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

Customer Background IPRs: the Background IPR of the Customer.

Customer Materials: all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier.

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.

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.

Force Majeure Event: has the meaning given to it in clause 15.

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 relevant plans or 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 the 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: the description or specification for Services agreed in writing by the Customer and the Supplier.

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

Supplier Background IPR: the Background IPR of the Supplier.

Supplier Materials: has the meaning given in clause 8.1(h).

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 in accordance with these Conditions.
- 2.2** An Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3** Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of Goods or illustrations or descriptions of Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of a Contract nor have any contractual force.
- 2.4** These Conditions apply to each Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5** Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.6** All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. Goods

- 3.1** The Goods are described any applicable Goods Specification.
- 3.2** To the extent that Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including 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 Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of a Contract.
- 3.3** The Supplier reserves the right to amend a Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

4. Delivery of Goods

4.1 The Supplier shall ensure that:

- (a) each delivery of Goods is accompanied by a delivery note which shows the date of the Order, the type and quantity of the Goods, special storage instructions (if any) and, if the relevant Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (b) it states clearly on the delivery note any requirement for the Customer to return any packaging material to the Supplier. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.2 The Supplier shall deliver Goods to the location set out in the associated Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.

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

4.4 Any dates quoted for delivery of Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Supplier fails to deliver Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.6 If the Customer fails to accept delivery of Goods within 3 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the associated Contract in respect of the Goods:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am (GMT) on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and

- (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.7 If 10 Business Days after the day on which the Supplier notified the Customer that Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may dispose of part or all of the Goods and charge the Customer for the price of the Goods.

4.8 The Supplier may deliver Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. Quality of Goods

5.1 The Supplier warrants that on delivery Goods shall:

- (a) conform in all material respects with their description and any applicable Goods Specification;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);
and
- (d) be fit for any purpose held out by the Supplier.

5.2 Subject to clause 5.3, the Supplier shall, at its option, repair or replace defective Goods, or refund the price of defective Goods in full if:

- (a) the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;

- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal working conditions; or
- (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of any Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. Title and risk

6.1 The risk in Goods shall pass to the Customer on completion of delivery.

6.2 Title to Goods shall not pass to the Customer until the earlier of:

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

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

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(d); and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

6.5 If before title to Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(d), then, without limiting any other right or remedy the Supplier may have:

- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- (b) the Supplier may at any time:
 - (i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Supply of Services

7.1 The Supplier shall supply Services to the Customer in accordance with any Service Specification in all material respects.

7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for Services agreed by the parties in writing, but any such dates shall be estimates only and time shall not be of the essence for the performance of Services.

7.3 The Supplier reserves the right to amend any Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of Services, and the Supplier shall notify the Customer in any such event.

7.4 The Supplier warrants to the Customer that Services will be provided using reasonable care and skill.

8. Customer's obligations

8.1 The Customer shall:

- (a) ensure that the terms of each Order and any information it provides in any Service Specification and any Goods Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to Services;

- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other premises and facilities as reasonably required by the Supplier to provide Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises and any other premises for the supply of Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for Services before the date on which the Services are to start;
- (g) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises and any other premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (i) comply with any additional obligations as set out in any Service Specification and any Goods Specification.

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

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

9. Charges and payment

9.1 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 as at the associated Commencement Date; and
- (b) shall be exclusive of all costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

9.2 The charges for Services:

- (a) shall be the price set out in an Order; and
- (b) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of Services, and for the cost of any materials.

9.3 The Supplier reserves the right to:

- (a) increase the charges for Services under a Contract on an annual basis with effect from each anniversary of the relevant Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index; and
- (b) increase the price of Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
 - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of the Goods ordered, or the associated Goods Specification; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

9.4 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 associated Order.

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

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

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

9.6 All amounts payable by the Customer under a Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under 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 Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.7 If the Customer fails to make a payment due to the Supplier under a Contract by the due date, then, without limiting the Supplier's remedies under clause 13 (Termination), 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 9.7 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.

9.8 All amounts due under a Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9.9 Unless the Customer notifies the Supplier that it disputes an invoice within 7 days of the date of the invoice, the invoice shall be deemed to be accepted by the Customer and shall be payable by the Customer.

9.10 Should the Supplier be required to enforce these Conditions against the Customer (including, without limitation, to recover payment of unpaid invoices) then the Customer shall indemnify the Supplier against all costs and expenses (including professional and legal costs and expenses on a full indemnity basis) suffered or incurred by the Supplier arising out of or in connection with the Supplier enforcing these Conditions.

10. Intellectual property rights and data protection

10.1 The Supplier hereby assigns to the Customer 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.

- 10.2** The Customer hereby grants to the Supplier a royalty-free, non-exclusive, 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.
- 10.3** 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.
- 10.4** 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 10.5, Supplier Background IPR), to the extent such licence is necessary for the Customer to receive the full benefit of the associated Services.
- 10.5** The Supplier warrants, represents and undertakes that the Customer shall not require the use of any Supplier Background IPRs to receive the benefit of 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 10.4).
- 10.6** Both parties will comply with all applicable requirements of the Data Protection Legislation. The obligations regarding data protection in this clause 10 are in addition to, and do not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 10.7** 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.
- 10.8** Without prejudice to the generality of clause 10.6, 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.

10.9 Without prejudice to the generality of the obligations regarding data protection in this clause 10, 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 10, **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; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with its data protection obligations in this clause 10 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.

10.10 The Customer consents to the Supplier appointing third party processors of personal data under a Contract. The Supplier confirms that it has entered or (as the case may be) will enter into a written agreement with any third party processor incorporating data protection terms which are substantially similar to those set out in this clause 10 and in either case which the Supplier confirms or undertakes, as the case may be, 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 10.

10.11 Either party may, at any time on not less than 30 days' notice, revise the data protection terms in this clause 10 by replacing them with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.

11. Confidentiality

11.1 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 11.2.

11.2 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 comply with this clause 11; and

- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

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

12. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

12.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £1 million per claim. The limits and exclusions in this clause reflect the commercial value of a Contract and the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

12.2 The restrictions on liability in this clause 12 apply to every liability arising under or in connection with a Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.3 Nothing in a Contract limits any liability which cannot legally be limited, including but not limited to liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

12.4 Subject to clause 12.3, the Supplier's total liability to the Customer in respect of all breaches of duty occurring in respect of a Contract shall not exceed the cap.

12.5 In clause 12.4:

- (a) **cap.** The cap is the lesser of £1 million and 1.5 times the total charges; and
- (b) **total charges.** The total charges means all sums paid by the Customer and all sums payable under a Contract in respect of Goods and Services actually supplied by the Supplier, whether or not invoiced to the Customer.

12.6 This clause 12.6 sets out specific heads of excluded loss:

- (a) Subject to clause 12.3, the types of loss listed in clause 12.6(b) are wholly excluded by the parties.

- (b) The following types of loss are wholly excluded:
- (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;
 - (v) loss of use or corruption of software, data or information;
 - (vi) loss of or damage to goodwill; and
 - (vii) indirect or consequential loss.

12.7 The Supplier has given commitments as to compliance of Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from a Contract.

12.8 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

12.9 This clause 12 shall survive termination of a Contract.

13. Termination

13.1 Without affecting any other right or remedy available to it, either party may terminate a Contract by giving the other party not less than 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 its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice 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;

- (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; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

13.3 Without affecting any other right or remedy available to it, the Supplier may terminate a Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of control of the Customer.

13.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under a Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

14. Consequences of termination

14.1 On termination of a Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
- (b) the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

14.2 Termination or expiry of a Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the 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 have effect after termination or expiry shall continue 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 a Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**).

16. Restrictions

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

- (a) attempt to solicit or entice away from the employment or service of the Supplier 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 Supplier or any of its group companies;
- (b) solicit or entice away from the employment or service of the Supplier 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 Supplier 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 Customer 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 Supplier or any of its group companies during the term of a Contract with whom the Customer 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 Supplier if they were involved in any capacity in any business concern which competes with the business of the Supplier.

16.4 If the Customer commits a breach of clause 16.1 above, it shall on demand pay to the Supplier or its relevant group company a sum equal to one year's basic salary or the

annual fee that was payable by the Supplier or its relevant group company to the Restricted Person plus the recruitment costs incurred by the Supplier 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 Supplier or its relevant group company.

- 16.5** In order to protect the legitimate business interests of the Supplier and each of its group companies, the Customer covenants with the Supplier for itself and as agent for each of its group companies that it shall not (except with the prior written consent of the Supplier) have any business dealings with or solicit, entice or attempt to entice away, a Restricted Supplier, if such dealing, solicitation or enticement causes or is reasonably likely to cause such supplier to cease supplying, or to reduce its supply of goods or services to, the Supplier or any of its group companies, or to vary adversely the terms upon which it conducts business with the Supplier or any of its group companies.
- 16.6** The Customer 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 Supplier** shall mean any firm, company or person who is or has at any time during the immediately preceding 12 months been a supplier of goods or services to the Supplier or any of its group companies.

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

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
 - (i) 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) 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.
- (b) Each party acknowledges that in entering into a Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in a Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

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 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 or formation.

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 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.