



Services Agreement

A supply of services agreement for use in business-to-business transactions.

This agreement is dated [DATE]

PARTIES

(1)[FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] **(Supplier)**

(2)[FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] **(Customer)**

BACKGROUND

(A) The Supplier is in the business of providing [DESCRIBE SERVICES].

(B) The Customer wishes to obtain and the Supplier wishes to provide such services on the terms set out in this agreement.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions.

Affiliate: any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

Applicable Laws: all applicable laws, statutes, regulations [and codes] from time to time in force.

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

Business Hours: the period from [9.00 am to 5.00 pm] on any Business Day.

Change Order: has the meaning given in *Clause 7.1*.

Charges: the sums payable for the Services, as set out in *Schedule 2*.

control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Customer's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items specified in *Schedule 1*.

Customer's Manager: the individual identified as such in *Schedule 3*, being the person responsible for managing the Services on behalf of the Customer.

Customer Materials: all documents, information, items and materials in any form (whether owned by the Customer or a third party), which are provided by the Customer to the Supplier in connection with the Services, including the items provided pursuant to *Clause 5(d)*.

[**Data Protection Legislation:** up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.]

Deliverables: any outputs of the Services and any other documents, products and materials provided by the Supplier to the Customer as specified in *Schedule 1* and any other documents, products and materials provided by the Supplier to the Customer in relation to the Services (excluding the Supplier's Equipment).

GDPR: General Data Protection Regulation ((EU) 2016/679).

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.

Key Personnel: the Supplier's Manager and the individuals identified as key personnel in *Schedule 3*, or any replacement individuals appointed by the Supplier pursuant to *Clause 4.3(d)* and *Clause 4.3(e)*.

Mandatory Policies: the Customer's business policies [and codes] [attached **OR** listed] in *Schedule 4* [, as amended by notification to the Supplier from time to time].

Milestones: a date by which a part of the Services is to be completed, as set out in *Schedule 1*.

Services: the services set out in *Schedule 1*, including services which are incidental or ancillary to such services.

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier, its agents, subcontractors or consultants to the Customer and used directly or indirectly in the supply of the Services, including any such items specified in *Schedule 1*.

Supplier's Manager: the individual identified in *Schedule 3*, or any replacement individual appointed by the Supplier pursuant to *Clause 4.3(d)* and *Clause 4.3(e)*, being the person responsible for managing the Services on behalf of the Supplier.

1.2 Clause, Schedule [and paragraph] headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

1.9 A reference to a statute or statutory provision is a reference to it as [amended, extended or re-enacted from time to time **OR** it is in force as at the date of this agreement].

1.10 A reference to a statute or statutory provision shall include all subordinate legislation made [from time to time **OR** as at the date of this agreement] under that statute or statutory provision.

1.11 A reference to **writing** or **written** includes fax [and email **OR** but not email].

1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.13 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

1.14 References to clauses [and Schedules] are to the clauses [and Schedules] of this agreement [and references to paragraphs are to paragraphs of the relevant Schedule].

1.15 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. COMMENCEMENT AND DURATION

2.1 This agreement shall commence on [[DATE] **OR** the date when it has been signed by all the parties] and shall continue, unless terminated earlier in accordance with *Clause 16* (Termination), until [[DATE] **OR** the [first] anniversary of the [date **OR** commencement] of this agreement] when it shall terminate automatically without notice.

2.2 The Supplier shall provide the Services to the Customer in accordance with this agreement [from [DATE] **OR** the date of this agreement].

3. [TUPE ON EXIT The provisions of *Schedule 6* shall apply when this agreement expires or is terminated earlier in accordance with *Clause 16* (Termination).]

4. SUPPLIER'S RESPONSIBILITIES

4.1 The Supplier shall:

- (a)** provide the Services and the Deliverables in accordance with *Schedule 1*;
- (b)** ensure that the Services and Deliverables will conform in all respects with *Schedule 1* and that the Deliverables shall be fit for any purpose expressly or implicitly made known to the Supplier by the Customer;
- (c)** perform the Services with the highest level of care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (d)** ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
- (e)** co-operate with the Customer in all matters relating to the Services, and comply with the Customer's instructions;
- (f)** before the date on which the Services are to start, obtain and at all times, maintain during the term of this agreement, all necessary licences and consents and comply with all Applicable Laws in relation to:
 - (i)** the Services; and
 - (ii)** the installation and use of the Supplier's Equipment;
- (g)** observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises from time to time and that have been communicated to it under *Clause 5(f)* [and attached at *Schedule 4*]. The Customer reserves the right to refuse any of the Supplier's personnel involved in the provision of the Services access to the Customer's premises, which shall only be given to the extent necessary for the performance of the Services;
- (h)** hold all Customer Materials in safe custody at its own risk and maintain the Customer Materials in good condition until returned to the Customer, and not dispose of or use the Customer Materials other than in accordance with the Customer's written instructions or authorisations;
- (i)** take good care of any of the Customer's Equipment provided by the Customer pursuant to *Clause 5(e)*;
- (j)** not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;

(k) notify the Customer in writing immediately upon the occurrence of a change of control of the Supplier; and

(l) [ANY OTHER GENERAL OBLIGATIONS].

4.2 Time is of the essence in relation to [any performance dates **OR** Milestones] for the Supplier. If the Supplier fails to meet the relevant deadlines, then (without prejudice to the Customer's right to terminate this agreement and any other rights it may have), the Customer may:

(a) refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

(b) purchase substitute services from elsewhere [and reclaim from the Supplier any additional costs incurred as a result of procuring such services from a third party instead of the Supplier];

(c) hold the Supplier accountable for any loss and additional costs incurred; and

(d) have any sums previously paid by the Customer to the Supplier in respect of the affected Services refunded by the Supplier.

4.3 In relation to the Supplier's personnel, the Supplier shall:

(a) use the Key Personnel in the provision of the Services [and procure that the Key Personnel spend [all **OR** at least [NUMBER]%] of their working hours in the provision of the Services];

(b) ensure that all personnel involved in the provision of the Services have suitable skills and experience to enable them to perform the tasks assigned to them, and that such personnel are in sufficient number to enable the Supplier to fulfil its obligations under this agreement;

(c) ensure that the Supplier's Manager has authority to bind the Supplier on all matters relating to the Services (including by signing Change Orders);

(d) promptly inform the Customer of the absence (or the anticipated absence) of any of the Key Personnel, and if so required by the Customer, provide a suitably qualified replacement for such individual; and

(e) use its best endeavours not to make any changes to the Key Personnel throughout the term of this agreement and obtain the prior [written] approval of the Customer [(such

approval not to be unreasonably withheld or delayed)] to any replacements for such individuals.

5. CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) ensure that the Customer's Manager has authority to bind the Customer on all matters relating to the Services (including by signing Change Orders);
- (c) provide access to the Customer's premises and data[, and such office accommodation] and other facilities as may reasonably be requested by the Supplier and agreed with the Customer [in writing] in advance, for the purposes of the Services;
- (d) provide to the Supplier all documents, information, items and materials required under *Schedule 1*;
- (e) provide the Customer's Equipment to the Supplier by the dates specified and in the manner prescribed in *Schedule 1*;
- (f) inform the Supplier of all health and safety and security requirements that apply at [any of] the Customer's premises which the Supplier will require access to. [The Customer's requirements in this regard are set out in *Schedule 4*]; and
- (g) [ANY OTHER RELEVANT OBLIGATIONS].

6. DEFAULT BY THE CUSTOMER

A failure by the Customer to comply with the terms of this agreement can only relieve the Supplier from complying with its obligations under this agreement with effect from the date on which the Supplier notifies the Customer [in writing and in reasonable detail] of the Customer's failure and its effect or anticipated effect on the Services.

7. CHANGE CONTROL

7.1 Either party may propose changes to the scope or execution of the Services, but no proposed changes shall come into effect until a relevant Change Order has been signed by both parties. A **Change Order** shall be a document setting out the proposed changes and

the effect those changes will have on:

- (a) the Services;
- (b) the Charges;
- (c) the timetable for the Services; and
- (d) any terms of this agreement.

7.2 If the Customer wishes to make a change to the Services:

(a) it shall notify the Supplier, providing as much detail as is reasonably necessary to enable the Supplier to prepare the draft Change Order; and

(b) the Supplier shall, within [NUMBER] Business Days of receiving the Customer's request at *Clause 7.2(a)*, provide a draft Change Order to the Customer.

7.3 If the Supplier wishes to make a change to the Services, it shall provide a draft Change Order to the Customer.

7.4 If the Supplier submits a draft Change Order in order to comply with any applicable safety or regulatory requirements and such changes do not affect the nature, scope of, or charges for the Services, the Customer shall not unreasonably withhold or delay consent to it.

7.5 If the parties:

(a) agree to a Change Order, they shall sign it and that Change Order shall amend this agreement; or

(b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with *Clause 31* (Multi-tiered dispute resolution procedure).

7.6 [The Supplier shall only be entitled to charge for the time it spends on preparing and negotiating Change Orders which originate from the Customer in accordance with *Clause 7.2*. The Supplier shall charge for its time so spent on a time and materials basis at the Supplier's daily rates specified in *Schedule 2*.]

8. CHARGES AND PAYMENT

8.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Charges.

8.2 Where the Charges are calculated on a time and materials basis:

(a) the Supplier's daily fee rates for each individual person as set out in *Schedule 2* are calculated on the basis on an eight-hour day, worked during Business Hours;

(b) the Supplier shall not be entitled to charge on a pro rata basis for part days worked by the Supplier's team during Business Hours, unless it has the Customer's prior written consent to do so;

(c) [if the Customer has agreed to the Supplier's personnel carrying out specific work outside Business Hours the Supplier may charge for the time so spent by such personnel at an overtime rate of [PERCENTAGE]% of the daily fee rate set out in *Schedule 2*, pro-rated to reflect the hours worked. The Customer may not charge for work done outside Business Hours in any other circumstances; and]

(d) the Supplier shall ensure that every individual whom it engages on the Services completes time sheets to record time spent on the Services, and the Supplier shall indicate the time spent per individual in its invoices.

8.3 The Charges shall exclude the following costs which shall be payable by the Customer monthly in arrears, subject to submission of an appropriate invoice:

(a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services[, such expenses to be incurred in accordance with the policy attached at *Schedule 4*] provided always that the Supplier shall obtain the Customer's written approval before incurring any such expense which exceeds £[AMOUNT] in any month; and

(b) the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Services as such items and their cost are specified in *Schedule 1* or approved by the Customer in advance from time to time.

8.4 The Supplier shall invoice the Customer for the Charges at the intervals specified, or on the achievement of the Milestones indicated in *Schedule 1*. If no intervals are specified, the Supplier shall invoice the Customer at the end of each month for Services performed during that month.

8.5 The Customer shall pay each invoice submitted to it by the Supplier within [30] days of receipt to a bank account nominated in writing by the Supplier.

8.6 If the Customer fails to make a payment due to the Supplier under this agreement by the due date, then, without limiting the Supplier's remedies under *Clause 16* (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 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 If the Customer disputes a payment in good faith, then the interest payable under *Clause 8.6* is only payable after the dispute is resolved, on sums found or agreed to be due, from [the due date **OR** [NUMBER] days after the dispute is resolved] until payment.

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 this agreement. If the liabilities to be set off are expressed in different currencies, the Customer may convert either liability at a market rate of exchange for the purpose of set-off. 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 this agreement or otherwise.

9. [AUDIT

9.1 [The Supplier shall allow the Customer (or its professional advisers) to access the Supplier's premises, personnel, systems and relevant records to verify that the Charges and any other sums charged to the Customer under this agreement are accurate.]

9.2 [Subject to the Customer's obligations of confidentiality at *Clause 14* (Confidentiality), the Supplier shall provide the Customer (and its professional advisers) with all reasonable co-operation, access and assistance in relation to each audit.]

9.3 [The Customer shall provide at least [NUMBER] Business Days' notice of its intention to conduct an audit and any audit shall be conducted during Business Hours.]

9.4 The Customer and its professional advisers shall have the right to take copies of any records which they reasonably require and remove such copies and the Supplier shall provide the necessary facilities to assist in copying free of charge.]

10. INTELLECTUAL PROPERTY RIGHTS

10.1 In relation to the Customer Materials:

(a) the Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and

(b) the Customer grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this agreement for the purpose of providing the Services to the Customer.

10.2 In relation to the Deliverables:

(a) the Supplier and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials;

(b) the Supplier grants to the Customer, or shall procure the direct grant to the

Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free [perpetual and irrevocable licence **OR** licence during the term of this agreement] to copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and

(c) the Customer may sub-license the rights granted in *Clause 10.2(b)*:

(i) [to its Affiliates and customers; and]

(ii) [subject to their entering into appropriate confidentiality undertakings,] to third parties for the purpose of the Customer's receipt of services similar to the Services.

10.3 The Supplier:

(a) warrants that the receipt, use and onward supply of the Services and the Deliverables (excluding the Customer Materials) by the Customer [and its permitted sub-licensees] shall not infringe the rights, including any Intellectual Property Rights, of any third party; and

(b) shall indemnify the Customer in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use of supply of the Services and the Deliverables (excluding the Customer Materials).

10.4 [If the Supplier is required to indemnify the Customer under this *Clause 10*, the Customer shall:

(a) notify the Supplier in writing of any claim against it in respect of which it wishes to rely on the indemnity at *Clause 10.3(b)* (**IPRs Claim**);

(b) allow the Supplier, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Supplier shall obtain the Customer's prior approval of any settlement terms, such approval not to be unreasonably withheld;

(c) provide the Supplier with such reasonable assistance regarding the IPRs Claim as is required by the Supplier, subject to reimbursement by the Supplier of the Customer's costs so incurred; and

(d) not, without prior consultation with the Supplier, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Supplier considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute.]

11. INSURANCE

During the term of this agreement [and for a period of [PERIOD] after the expiry or termination of this agreement,] the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance at an amount not less than £[AMOUNT] and public liability insurance at an amount not less than £[AMOUNT] to cover the liabilities that may arise under or in connection with this agreement and shall produce to the Customer on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

12. COMPLIANCE WITH LAWS AND POLICIES

In performing its obligations under this agreement, the Supplier shall comply with:

- (a)** the Applicable Laws and the Supplier will inform the Customer as soon as it becomes aware of any changes in the Applicable Laws; and
- (b)** the Mandatory Policies.

13. [DATA PROTECTION AND DATA PROCESSING

13.1 [Both parties will comply with all applicable requirements of the Data Protection Legislation. This *Clause 13* is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.]

13.2 [The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation. *Schedule 5* 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 (both as defined in the Data Protection Legislation).]

13.3 [Without prejudice to the generality of *Clause 13.1*, 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 this agreement.]

13.4 [Without prejudice to the generality of *Clause 13.1*, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

(a) process that Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (Applicable Data Processing Laws). Where the Supplier is relying on 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 Data Processing Laws unless those Applicable Data Processing Laws prohibit the Supplier from so notifying the Customer;

(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; and

(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 the agreement unless required by Applicable Data Processing Law to store the Personal Data; [and]]

(h) maintain complete and accurate records and information to demonstrate its compliance with this *Clause 13* [and allow for audits by the Customer or the Customer's designated auditor][. **OR** ; and]

(i) [[indemnify the Customer against any loss or damage suffered by the Customer in relation to any breach by the Supplier of its obligations under this *Clause 11*.]]

13.5 [[The Customer does not consent to the Supplier appointing any third party processor of Personal Data under this agreement. **OR** The Customer consents to the Supplier appointing [THIRD-PARTY PROCESSOR] as a third-party processor of Personal Data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement [substantially on that third party's standard terms of business **OR** incorporating terms which are substantially similar to those set out in this *Clause 13*]. 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 13*.]

13.6 [Either party may, at any time on not less than 30 days' notice, revise this *Clause 13* by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).]

14. CONFIDENTIALITY

14.1 Each party undertakes that it shall not [at any time **OR** at any time during this agreement, and for a period of [five] years after termination of this agreement,] disclose to any person any confidential information concerning the business, affairs, customer, clients or suppliers or the other party [or of any member of the group of companies to which the other party belongs], except as permitted by *Clause 14.2*.

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

(a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this *Clause 14*; and

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

14.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

15. LIMITATION OF LIABILITY

15.1 Nothing in this agreement:

(a) shall limit or exclude the Supplier's or the Customer's liability for:

(i) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;

(ii) fraud or fraudulent misrepresentation;

(iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) any other liability which cannot be limited or excluded by applicable law; or

(b) shall limit or exclude the Supplier's liability under *Clause 10.3(b)* (IPR indemnity) [or *Clause 13.4(i)*(Data processing indemnity)].

15.2 Subject to *Clause 15.1*:

(a) neither party to this agreement shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement;

(b) the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to the greater of £[MINIMUM FIGURE] and [NUMBER IN WORDS] per cent ([NUMBER IN FIGURES]%) of the total annual charges (calculated by reference to the charges in successive 12-month periods from the date of this agreement) paid and payable by the Customer under this agreement; and

(c) the Customer's total liability to the Supplier, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to [£[FIGURE] **OR** the greater of £[MINIMUM FIGURE] and [NUMBER IN WORDS] per cent ([NUMBER IN FIGURES]%) of the total charges paid by the Customer under this agreement].

15.3 Notwithstanding *Clause 15.2(a)*, the losses for which the Supplier assumes responsibility and which shall (subject to *Clause 15.2(b)*) be recoverable by the Customer include:

(a) sums paid by the Customer to the Supplier pursuant to this agreement, in respect of any services not provided in accordance with the terms of this agreement;

(b) wasted expenditure;

(c) additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;

(d) losses incurred by the Customer arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including

any subcontractor, Supplier personnel, regulator or customer of the Customer) against the Customer caused by the act or omission of the Supplier;

(e) anticipated savings;

(f) [ANY OTHER HEADS OF LOSSES THE CUSTOMER WISHES TO RECOVER].

15.4 No amount awarded or agreed to be paid under the indemnity in *Clause 10.3(b)* (IPR indemnity) [or *Clause 13.4(i)* (Data processing indemnity)] shall count towards the cap on the Supplier's liability under *Clause 15.2(b)*.

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

16. TERMINATION

16.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving [written] notice to the other party if:

(a) [the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than [NUMBER] days after being notified [in writing] to make such payment;]

(b) the other party commits a material breach of any [other] term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of [NUMBER] days after being notified [in writing] to do so;

(c) [the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;]

(d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply];

(e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];

(f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) [other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];

(g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);

(h) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

(i) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;

(j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within [14] days;

(k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in *Clause 16.1(d)* to *Clause 16.1(j)* (inclusive); and

(l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

16.2 [For the purposes of *Clause 16.1(b)*, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

(a) a substantial portion of this agreement; or

(b) any of the obligations set out in clauses [NUMBERS],

over [the term of this agreement **OR** any [NUMBER]-month period during the term of this agreement]. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.]

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

(a) the Supplier commits a breach of *Clause 12* (Compliance with laws and policies); or

(b) there is a change of control of the Supplier.

17. CONSEQUENCES OF TERMINATION

17.1 On termination or expiry of this agreement:

(a) the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all of the Customer Materials and the Customer's Equipment. 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 delivered or returned, the Supplier shall be solely responsible for the safe keeping of all Deliverables, Customer Materials and Customer's Equipment in its possession and will not use them for any purpose not connected with this agreement; and

(b) the Supplier shall, if so requested by the Customer, provide all assistance reasonably required by the Customer to facilitate the smooth transition of the Services to the Customer or any replacement supplier appointed by it [including the assistance as set out in the [SCHEDULE]].

(c) the following clauses shall continue in force: *Clause 1* (Interpretation), *Clause 3* (TUPE on exit), *Clause 9* (Audit), *Clause 10* (Intellectual Property Rights), *Clause 14* (Confidentiality), *Clause 15* (Limitation of liability), *Clause 17* (Consequences of termination), *Clause 18* (Inadequacy of damages), *Clause 22* (Waiver), *Clause 24* (Severance), *Clause 26* (Conflict), *Clause 31* (Multi-tiered dispute resolution procedure), *Clause 32* (Governing law) and *Clause 33* (Jurisdiction).

17.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

18. INADEQUACY OF DAMAGES

Without prejudice to any other rights or remedies that the Customer may have, the Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement by the Supplier. Accordingly, the Customer shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement.

19. FORCE MAJEURE

19.1 Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:

(a) acts of God, flood, drought, earthquake or other natural disaster;

(b) epidemic or pandemic;

(c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

(d) nuclear, chemical or biological contamination or sonic boom;

(e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition[, or failing to grant a necessary licence or consent];

(f) collapse of buildings, fire, explosion or accident; [and]

(g) [any labour or trade dispute, strikes, industrial action or lockouts [(other than in each case by the party seeking to rely on this clause, or companies in the same group as that party)]];]

(h) [non-performance by suppliers or subcontractors [(other than by companies in the same group as the party seeking to rely on this clause)]; and]

(i) interruption or failure of utility service.

19.2 Provided it has complied with *Clause 19.4*, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

19.3 [The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.]

19.4 The Affected Party shall:

(a) as soon as reasonably practicable after the start of the Force Majeure Event[but no later than [NUMBER] days from its start], notify the other party [in writing] of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and

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

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

20. ASSIGNMENT AND OTHER DEALINGS

20.1 The Supplier shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this

agreement.

20.2 The Customer may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this agreement[, provided that it gives prior written notice of such dealing to the Supplier].

21. VARIATION

Subject to *Clause 7* (Change control), no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

22. WAIVER

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

22.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

22.3 [A party that waives a right or remedy provided under this agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.]

23. RIGHTS AND REMEDIES

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

24. SEVERANCE

24.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

24.2 If [one party gives notice to the other of the possibility that] any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

25. ENTIRE AGREEMENT

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

25.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

25.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

26. CONFLICT

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

27. NO PARTNERSHIP OR AGENCY

27.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

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

28. THIRD PARTY RIGHTS

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

28.2 [[The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.]]

29. NOTICES

29.1 Any notice [or other communication] given to a party under or in connection with this agreement shall be in writing and shall be:

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

(b) [sent by fax to its main fax number **OR** sent by email to the address specified in [SPECIFY RELEVANT DOCUMENT OR PLACE]].

29.2 Any notice [or communication] shall be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt [or at the time the notice is left at the proper address];

(b) if sent by pre-paid first-class post or other next Business Day delivery services, at [9.00 am] on the [second] Business Day after posting [or at the time recorded by the delivery service].

(c) if sent by [fax **OR** email], at [9.00am] on the next Business Day after transmission.

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

29.4 [A notice given under this agreement is not valid if sent by email.]

30. COUNTERPARTS

30.1 This agreement may be executed in any number of counterparts, each of which when executed [and delivered] shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

30.2 [Transmission of [an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) **OR** the executed signature page of a counterpart of this agreement] by (a) fax or (b) email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.]

30.3 [No counterpart shall be effective until each party has executed [and delivered] at least one counterpart.]

31. MULTI-TIERED DISPUTE RESOLUTION PROCEDURE

31.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then [except as expressly provided in this agreement,] the parties shall follow the procedure set out in this clause:

(a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the [EMPLOYEE TITLE] of the Customer and [EMPLOYEE TITLE] of the Supplier shall attempt in good faith to resolve the Dispute;

(b) if the [EMPLOYEE TITLE] of the Customer and [EMPLOYEE TITLE] of the Supplier are for any reason unable to resolve the Dispute within [30] days of service of the Dispute Notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of the Customer and [SENIOR OFFICER TITLE] of the Supplier who shall attempt in good faith to resolve it; and

(c) if the [SENIOR OFFICER TITLE] of the Customer and [SENIOR OFFICER TITLE] of the Supplier are for any reason unable to resolve the Dispute within [30] days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than [NUMBER] days after the date of the ADR notice.

31.2 [The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under *Clause 33* (Jurisdiction) which clause shall apply at all times.

OR

No party may commence any court proceedings under *Clause 33* (Jurisdiction) in relation to the whole or part of the Dispute until [NUMBER] days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.]

31.3 If the Dispute is not resolved within [NUMBER] days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of [NUMBER] days, or the mediation terminates before the expiration of the said period of [NUMBER] days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with *Clause 33* (Jurisdiction).

32. GOVERNING LAW

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

33. JURISDICTION

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

This agreement has been entered into on the date stated at the beginning of it.

SCHEDULE 1 SERVICES DETAILS

- Services: [LIST SERVICES PROVIDED UNDER THIS AGREEMENT]
- [Service Levels:]

- Customer Materials: [SPECIFY]
- Customer's Equipment: [SPECIFY]
- Supplier's Equipment: [SPECIFY]
- Milestones: [Milestones can be set out here, or in *Schedule 2* with the payment terms if payment is related to Milestones.]
- Timetable: [TIMETABLE FOR PERFORMANCE OF SERVICES]
- Deliverables: [DELIVERABLES FOR SERVICES]
- Acceptance criteria: [ACCEPTANCE CRITERIA]

**SCHEDULE 2
CHARGES, COSTS AND PAYMENT**
Charges: [SPECIFY]

- **Fixed price:**
 - The total charges for the Services are £[AMOUNT].
 - The fixed price is calculated as follows: [CALCULATION METHOD]
- **Time and materials:**
 - The daily rate for the Supplier: [SPECIFY]
 - The weekend and overtime rate for the Supplier: [SPECIFY]

Payment terms: [SPECIFY]

Costs of third party materials and services charged in addition to the Charges:

The following materials and services procured from third parties shall be invoiced to the Customer in addition to the Charges: [INSERT DETAILS]

**SCHEDULE 3
SUPPLIER'S KEY PERSONNEL AND CUSTOMER'S MANAGER**
Supplier's Key Personnel:

- Supplier's Manager: [NAME]
- Other Key Personnel: [NAMES AND TITLES OF RELEVANT EMPLOYEES]

Customer Manager: [NAME]

**SCHEDULE 4
MANDATORY POLICIES**
[LIST [AND ATTACH] THE MANDATORY POLICIES HERE]

The Mandatory Policies are:

- [Modern Slavery and Human Trafficking Policy.]
- [Corporate and Social Responsibility Policy.]
- [Ethics and Anti-Bribery Policy.]
- [Expenses Policy.]
- [Health and Safety Policy.]
- [Security Policy.]

SCHEDULE 5

[PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. [PROCESSING BY THE SUPPLIER

1.1 SCOPE

1.2 NATURE

1.3 PURPOSE OF PROCESSING

1.4 DURATION OF THE PROCESSING]]

2. [TYPES OF PERSONAL DATA

3. [CATEGORIES OF DATA SUBJECT]

SCHEDULE 6

TUPE ON EXIT

1. PERSONNEL

1.1 In this *Schedule 6* the following definitions apply:

(a) New Supplier: another party chosen by the Customer to take over the provision of all or part of the Services.

(b) Returning Employees: those persons listed in a Schedule to be agreed by the parties prior to the Subsequent Transfer Date who it is agreed were employed by the Supplier wholly and/or mainly in the Services immediately before the Subsequent Transfer Date.

(c) Subsequent Transfer Date: means the date or dates on which there is a transfer of responsibility for the provision of the Services or part of the Services between the Supplier and the Customer and/or a New Supplier (as the case may be).

(d) TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (as amended).

1.2 The parties acknowledge and agree that where all or part of the Services cease to be provided by the Supplier for any reason and where all or part of the Services continue to be provided by the Customer and/or a New Supplier, there may be a relevant transfer of the Returning Employees to the Customer and/or the New Supplier for the purposes of TUPE. If there is such a transfer, the employment of the Returning Employees shall transfer to the Customer and/or the New Supplier in accordance with TUPE with effect from the Subsequent Transfer Date.

1.3 Save where the parties reasonably believe that there will be no relevant transfer for the purposes of TUPE, the parties shall co-operate in agreeing a list of Returning Employees prior to the Subsequent Transfer Date, and shall co-operate in seeking to ensure the orderly transfer of the Returning Employees to the Customer and/or the New Supplier.

1.4 The Supplier shall not later than [six] months prior to the expiry of this agreement (or, if earlier, within [NUMBER] days of notice being given of termination of this agreement) to the extent lawfully permitted provide the Customer with the following details:

(a) a list of those personnel engaged in the Services (**Potential Returning Employees**);

(b) job title, age, length of continuous services, current remuneration, benefits, and notice periods of the Potential Returning Employees;

(c) terms and conditions of employment of the Potential Returning Employees, including any particulars that the Supplier is obliged to give under section 1 of the Employment Rights Act 1996;

(d) any current disciplinary or grievance proceedings ongoing in respect of the Potential Returning Employees and any such proceedings in the preceding two years;

(e) any claims, current or which the Supplier has reasonable grounds to believe will be brought by the Potential Returning Employees or their representatives or which have been brought in the preceding two years;

(f) all benefit schemes or arrangements (whether contractual or not) applicable in respect of the Potential Returning Employees;

(g) information on any collective agreements which will have effect in relation to the Potential Returning Employees after the Subsequent Transfer Date pursuant to TUPE.

The Supplier shall provide updates of the details listed above at regular intervals to be specified by the Customer.

1.5 The Supplier shall indemnify the Customer (both for itself and a New Supplier) against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Customer and/or a New Supplier in connection with or as a result of:

(a) any claim or demand by any Returning Employee or a trade union or other body or person representing a Returning Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) arising from any act, fault or omission of the Supplier on or before the Subsequent Transfer Date;

(b) any failure by the Supplier to comply with its obligations under regulations 13 and 14 of TUPE, or any award of compensation under regulation 15 of TUPE, save where such failure arises from the failure of the Customer and/or New Supplier to comply with its or their duties under regulation 13 of TUPE;

(c) a claim by any person who transfers or alleges that they have transferred to the Customer or the New Supplier but whose name is not included in the list of Returning Employees.

1.6 If TUPE applies to transfer the employment of any person employed by the Supplier to the Customer or any New Supplier then if the Customer or such New Supplier shall serve a notice terminating the employment of such person within [six months] after the date of such transfer, the Supplier shall indemnify the Customer (for itself and a New Supplier) in respect of any statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which the Customer is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.

Signed by [NAME OF DIRECTOR] for and on behalf of [NAME OF SUPPLIER]

.....
Director

Signed by [NAME OF
DIRECTOR] for and on
behalf of [NAME OF
CUSTOMER]

.....
Director

**END OF
DOCUMENT**