

*University of*  
**HUDDERSFIELD**

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**Standard Terms and Conditions  
for the Supply of Services**

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## BACKGROUND

- (A) The Supplier wishes to supply to the Customer, and the Customer wishes to receive, the Services on and subject to the terms and conditions of this Agreement.

### 1. DEFINITIONS AND INTERPRETATION

In this Agreement and Contracts:

- 1.1 the following words and expressions have the following meanings unless the context requires otherwise:

**“Anti-Slavery Laws”**

any and all laws including statutes, statutory instruments, bye-laws, orders, regulations, directives, treaties, decrees, decisions (as referred to in Article 288 of the Treaty on the Functioning of the European Union) (including any judgment, order or decision of any court, regulator or tribunal) anywhere in the world which relate to anti-slavery or servitude, anti-forced or compulsory labour and/or anti-human trafficking, including the Modern Slavery Act

**“Applicable Law”**

any:

- (a) law including any statute, statutory instrument, bye-law, order, regulation, directive, treaty, decree, decision (as referred to in Article 288 of the Treaty on the Functioning of the European Union) (including any judgment, order or decision of any court, regulator or tribunal);
- (b) rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; and/or
- (c) industry code of conduct or guideline

which relates to this Agreement and/or a Contract and/or the Services and/or the activities which are comprised in all or some of the Services

**“Authority”**

any government, agency, regulator or prosecutor

**“Business Day”**

a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales

**“CFA”**

the Criminal Finances Act 2017

**“CFA Offence”**

an offence under section 45 or section 46 of the CFA

**“Charges”**

the charges for the Services set out in the Purchase Order

**“Confidential Information”**

has the meaning given to it in **clause 21.4.3**

**“Contract”**

has the meaning given to it in **clause 3.1**

**“Contract Expiry Date”**

the Contract Expiry Date specified in a Purchase Order

**“Contract Start Date”**

the earlier of:

- (a) the Contract Start Date specified in a Purchase Order; and
- (b) the date on which the Supplier commences the performance of the Services (whether in whole or in part)

**“Contract Term”**

the period starting on the Contract Start Date and ending on the earlier of:

- (a) the completion of performance of all Services which are set out in a relevant Purchase Order, or agreed in writing by the parties to be supplied by the Supplier;
- (b) the Contract Expiry Date; and
- (c) the termination of a Contract in accordance with the terms and conditions of this Agreement

**“Customer Materials”**

any materials, items, policies, procedures, manuals, software, data, documents, text, drawings, diagrams, images or sounds (together with any database made up of any of those), embodied in any medium:

- (a) that are supplied to the Supplier (or any sub-contractor of the Supplier) by or on behalf of the Customer;
- (b) which the Supplier (or any sub-contractor of the Supplier) is required to collect, generate, process, use, store or transmit pursuant to this Agreement and/or a Contract;
- (c) which the Supplier (or any sub-contractor of the Supplier) receives in connection with the provision of the Services; or
- (d) which the Supplier (or any sub-contractor of the Supplier) creates for the Customer as part of the Services

including all modifications, additions and developments made to any of those items

**“Deliverables”**

the items described in a Purchase Order or as otherwise agreed by the parties in writing from time to time to be delivered by the Supplier as part of the Services

**“Disputed Sum”**

has the meaning given to it in **clause 14.10**

**“EIRs”**

the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant authority to such Regulations

**“Facilitation of Tax Evasion Offence”**

a UK tax evasion facilitation offence or a foreign tax evasion facilitation offence, as those terms are defined in the CFA

<b>"FOIA"</b>	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant authority in relation to such Act
<b>"Information"</b>	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form)
<b>"Insolvent"</b>	<p>means a party:</p> <ul style="list-style-type: none"> <li>(a) has a receiver, administrator or provisional liquidator appointed;</li> <li>(b) is subject to a notice of intention to appoint an administrator;</li> <li>(c) passes a resolution for its winding-up (save for the purpose of a solvent restructuring);</li> <li>(d) has a winding up order made by a court in respect of it;</li> <li>(e) enters into any composition or arrangement with creditors (other than relating to a solvent restructuring);</li> <li>(f) ceases to carry on business;</li> <li>(g) has any steps or actions taken in connection with any of these procedures; or</li> </ul> <p>is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction.</p>
<b>"Intellectual Property Rights"</b>	all intellectual and industrial property rights of any kind whatsoever including patents, supplementary protection certificates, rights in know-how, registered trademarks, registered designs, models, unregistered design rights, unregistered trade marks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions
<b>"IPR Claim"</b>	has the meaning given to it in <b>clause 12.2</b>
<b>"Key Personnel"</b>	those persons described as key personnel within the Purchase Order
<b>"Liability"</b>	liability arising out of or in connection with this Agreement or any Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability under an indemnity

contained in this Agreement or any Contract and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of a party's obligations under this Agreement or any Contract, in each case howsoever caused including if caused by negligence or if caused by a deliberate and/or repudiatory breach by that party

<b>"Modern Slavery Act"</b>	the Modern Slavery Act 2015
<b>"Modern Slavery Practice"</b>	any practice that amounts to (a) slavery or servitude (each as construed in accordance with Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 as amended), (b) forced or compulsory labour (as defined by the International Labour Organisation's Forced Labour Convention 1930 (No. 29) and Protocol) (c) human trafficking or (d) the arranging or facilitation of the travel of another person with a view to that person being exploited
<b>"Order Acknowledgement"</b>	the Supplier's written acceptance of the Purchase Order
<b>"Property Liability"</b>	liability arising from or for loss or destruction of or damage to tangible property
<b>"Purchase Order"</b>	the Customer's written order for the supply of Services by the Supplier to the Customer on the terms and conditions of this Agreement
<b>"Request for Information"</b>	a Request for Information under the FOIA or the EIRs
<b>"Required Insurances"</b>	the Required Insurances set out in <b>clause 13</b>
<b>"Service Credits"</b>	the amounts by which the Charges are to be reduced for failure by the Supplier to achieve the Service Levels
<b>"Service Levels"</b>	the minimum standards of performance to which the Services are to be performed at all times
<b>"Services"</b>	the services specified in the Purchase Order
<b>"Site"</b>	any site from time to time owned, leased or otherwise occupied or used by the Customer
<b>"Specification"</b>	the written technical specification for the Services set out in or referred to in [the [Supplier's [sales catalogue] / [website]] <b>OR</b> [Purchase Order]
<b>"Start Date"</b>	as set out in or referred to in [Purchase Order]
<b>"Successor Supplier"</b>	has the meaning given to it in <b>clause 23.1.1</b>
<b>"Supplier Personnel"</b>	any person employed or engaged by the Supplier who is wholly or partly engaged in the provision of the Services
<b>"Term"</b>	the period starting on the Start Date and ending on the Termination Date

**"Termination Date"**

the date on which this Agreement expires or terminates for whatever reason

- 1.2 all headings are for ease of reference only and will not affect the construction or interpretation of this Agreement;
- 1.3 any Schedules form part of this Agreement and will have the same force and effect as if set out in the body of this Agreement and any reference to this Agreement will include the Schedules;
- 1.4 references to a "person" include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);
- 1.5 references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time;
- 1.6 any words following the words "include", "includes", "including", "in particular" or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them; and
- 1.7 the rule known as the ejusdem generis rule will not apply and accordingly the meaning of general words introduced by the word "other" or a similar word or expression will not be restricted by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things.

**2. SCOPE OF AGREEMENT**

- 2.1 This Agreement sets out the terms and conditions on which the Supplier will supply and the Customer will purchase Services during the Term.
- 2.2 This Agreement will be deemed to have commenced on the Start Date and will continue until terminated by either party giving not less than 30 days' written notice to that effect to the other party. This Agreement may be terminated earlier in accordance with the terms of this Agreement.

**3. CONTRACT FORMATION**

- 3.1 The Customer's Purchase Order constitutes an offer by the Customer to purchase the Services set out in the Purchase Order from the Supplier on the terms and conditions of this Agreement. A contract for the supply of Services by the Supplier to the Customer on the terms and conditions of this Agreement (the "**Contract**") will be formed when the Customer receives the Supplier's Order Acknowledgement.
- 3.2 The terms and conditions of this Agreement are the only terms and conditions on which the Customer will purchase services from the Supplier and will apply to the exclusion of all other terms and conditions including any terms and conditions which the Supplier purports to apply under any quotation, acknowledgement, acceptance or confirmation of order, delivery note, invoice or similar document (whether or not such document is referred to in this Agreement or any Contract) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing.
- 3.3 Commencement of performance of the Services will be deemed conclusive evidence of the Supplier's acceptance of the terms and conditions of this Agreement.
- 3.4 The Supplier may not cancel a Contract. The Customer may cancel a Contract in whole or in part immediately by giving written notice to that effect to the Supplier at any time before the provision of the Services commences. If the Customer exercises its right of cancellation under this **clause 3.3** the Customer's sole liability will be to pay the Supplier fair and

reasonable compensation for work-in-progress at the time of cancellation but such compensation will not include loss of profits (whether direct or indirect and whether actual or anticipated) or any indirect or consequential loss.

- 3.5 The Customer may, at any time by giving written notice to that effect to the Supplier vary the Services (in whole or in part) under a Purchase Order (a "**Purchase Order Amendment**"). If the Purchase Order Amendment will cause a change to the Charges or the timescales for performance of the Services then the Supplier must suspend performance of the relevant Contract and notify the Customer without delay, calculating the new Charge and revised timescales for performance of the Services. The Supplier must allow the Customer at least ten Business Days to consider any new Charge and revised timescales for performance of the Services and the Purchase Order Amendment shall be binding on the Customer and the Supplier when the Customer's authorised representative accepts in writing the new Charge and revised timescales for performance of the Services within such period. If the Customer's authorised representative fails to accept in writing the new Charges and revised timescales, then performance of the relevant Contract shall immediately resume as though the said Purchase Order Amendment had not been issued (except that the Customer may still exercise its right of cancellation in accordance with **clause 3.4**).

#### 4. **SERVICES**

- 4.1 During a relevant Contract Term, the Supplier will supply the Services and deliver the Deliverables to the Customer in accordance with the timescales set out in the Purchase Order.

- 4.2 Time for provision of the Services will be of the essence of any Contract. Without prejudice to any other rights and remedies the Customer may have pursuant to a relevant Contract:

4.2.1 the Supplier shall reimburse the Customer for all reasonable costs incurred by the Customer which have arisen as a direct consequence of the Supplier's delay in the performance of the Contract which the Supplier has failed to remedy after being given reasonable notice by the Customer; or

- 4.3 The Supplier will, in performing the Services:

4.3.1 use the degree of skill, care, prudence, supervision, diligence, foresight, quality control and quality management which would be adopted by a leading professional provider of the Services;

4.3.2 use appropriately qualified, trained and experienced Supplier Personnel;

4.3.3 conduct itself in a safe manner which is free from unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner;

4.3.4 ensure that it has and maintains all licences, permissions and consents required from time to time;

4.3.5 not do or omit to do anything which may cause the Customer to lose any licence, permission or consent or to be in breach of Applicable Law.

4.3.6 fulfil all requirements set out in the Purchase Order;

4.3.7 fully co-operate with the Customer's agents, representatives and contractors; and

4.3.8 comply with Applicable Law, requirements of any relevant statutory and regulatory bodies and health and safety and security policies and obey all of the Customer's lawful and reasonable directions.

- 4.4 The Customer has the right to inspect and examine the performance of the Services at any reasonable time. The Supplier will permit the Customer, its officers, employees, agents and



sub-contractors to enter the Supplier's premises on reasonable notice, and will procure permission for such persons to enter upon any relevant third party premises (including any of the Supplier's sub-contractors or supply chain partners), to carry out such inspection and examination and will provide the Customer with all facilities reasonably required.

4.5 If the Customer informs the Supplier that the Customer considers that the Services do not meet the requirements of a relevant Contract or differ in any way from those requirements, and this is other than as a result of default on the part of the Customer, the Supplier shall at its own expense re-schedule and re-perform the Services correctly within such reasonable time as the Customer may specify without prejudice to the Customer's other rights arising from any breach of the Contract.

4.6 The Supplier acknowledges that it:

4.6.1 has sufficient information about the Customer and the Specification and that it has made all appropriate and necessary enquires to enable it to perform the Services in accordance with this Agreement and any Contract;

4.6.2 shall neither be entitled to any additional payment nor excused from any obligation or liability under this Agreement or any Contract due to any misinterpretation or misunderstanding by the Supplier of any fact relating to the Specification or otherwise to this Agreement or any Contract; and

4.6.3 shall comply with all of the Customer's lawful and reasonable directions relating to performance of the Services.

4.7 The Services may include the Supplier assisting other suppliers providing services to the Customer at no additional cost to the Customer to the extent that such assistance or management of other suppliers is described in the Purchase Order, contemplated by or reasonably to be inferred from the Services or the nature or manner of the supply thereof.

5. **SERVICE LEVELS AND SERVICE CREDITS** [NOT USED]

6. **GUARANTEE**

6.1 The Supplier will provide to the Customer upon request, at the Supplier's expense, a parent company guarantee (from the Supplier's ultimate parent company unless otherwise agreed by the Customer) and/or a performance bond. The Customer will not be obliged to make any payments to the Supplier under any Contract until the parent company guarantee and/or performance bond has been provided in a form satisfactory to the Customer.

7. **WARRANTY**

7.1 The Supplier warrants and represents that:

7.1.1 it has full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Agreement and any Contract;

7.1.2 it shall discharge its obligations hereunder with all due skill, care and diligence including, but not limited to, good industry practice and (without limiting the generality of this clause) in accordance with its own established internal procedures;

7.1.3 it shall at all times comply with the Customer's policies and procedures as notified to the Supplier by the Customer, and as may be updated by the Customer from time to time, including the Customer's policies and procedures relating to regulatory compliance and data and information security; and

7.1.4 it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on

its business, assets or financial condition or its ability to observe or perform its obligations under this Agreement or any Contract.

## 8. **EMPLOYEES**

- 8.1 If a Contract involves the Supplier Personnel being present at any Site then the following terms shall apply:
- 8.1.1 before beginning any work at the Site the Supplier shall sign a certificate provided by the Customer certifying that the Supplier has been made aware of the Site regulations and that the Supplier will abide by them and will procure that (if applicable) the Supplier Personnel abide by the same;
  - 8.1.2 the Supplier shall ensure Supplier Personnel comply with all Applicable Law and the requirements of any relevant statutory and regulatory bodies; and
  - 8.1.3 the Supplier shall ensure Supplier Personnel comply with the Customer's reasonable requests and with any regulations that the Customer may notify to the Supplier or the Supplier Personnel in writing.
- 8.2 Except as expressly provided otherwise in the Contract, the Supplier will provide and be responsible at its own expense for delivery to and for unloading at any Site all plant, equipment and materials and other things required to provide the Services. All plant, equipment and materials brought to a Site shall be sited or deposited by the Supplier as directed by the Customer and shall remain at the Site at the Supplier's risk. The Supplier shall on completion of the Contract or at the Customer's request remove all such plant, equipment and materials and rubbish and leave all Sites in a clean and tidy condition.
- 8.3 The Supplier shall have access only to such parts of any Site as is reasonably necessary for the purpose of providing the Services and shall ensure that Supplier Personnel do not enter any part of a Site other than those parts as the Customer may from time to time authorise.
- 8.4 The Customer shall be entitled to object to Supplier Personnel being used in the provision of the Services who, in the Customer's reasonable opinion, has misconducted himself or has been incompetent or negligent. The Supplier shall remove that person from the Site and he shall not be employed again by the Supplier in connection with the Services without the Customer's permission. Any removal of Supplier Personnel under this clause shall not constitute a valid reason for the Supplier's failure to provide the Services in accordance with any Contract.
- 8.5 The Supplier shall ensure that the Services create as little interference as possible with the Customer's operations or the Customer's use and enjoyment of any public rights or with any easement or property.
- 8.6 The Supplier will employ the Key Personnel to supervise the performance of the Services. Any changes to the Key Personnel must be approved by the Customer in advance.
- 8.7 The Supplier shall ensure that the Supplier Personnel have all the necessary administrative and legal authorisations including (without limitation) entry visas, residence permits and work permits and ensure that Supplier Personnel required by the Customer to be security cleared obtain clearance prior to commencement of the Services and enter into a confidentiality agreement with the Customer in a form acceptable to the Customer.
- 8.8 The parties confirm that the Transfer of Undertakings (Protection of Employment) Regulations 2006 are not envisaged to apply on either the commencement or the expiry or termination of this Agreement or any Contract.
- 8.9 The Supplier will indemnify the Customer against all losses (including all direct, indirect and consequential losses), liabilities, costs, damages and expenses that the Customer does or will incur or suffer, all claims or proceedings made, brought or threatened against the Customer by any person and all losses (including all direct, indirect and consequential losses), liabilities, costs (on a full indemnity basis), damages and expenses the Customer

does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, in each case arising out of or in connection with any claims brought by any Supplier Personnel who allege that their contracts of employment have transferred to the Customer pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006.

## 9. **PROPERTY**

9.1 All materials, equipment and tools supplied to the Supplier by the Customer will at all times:

9.1.1 be and remain the Customer's exclusive property;

9.1.2 be held by the Supplier in safe custody at the Supplier's own risk;

9.1.3 be maintained and kept in good condition by the Supplier until returned to the Customer;

9.1.4 not be disposed of other than in accordance with the Customer's written instructions;

9.1.5 not be used otherwise than as authorised by the Customer in writing; and

9.1.6 be returned to the Customer on demand.

9.2 If the Customer makes available equipment and material to the Supplier, the Customer makes no warranty in relation to the quality and fitness for purpose of the equipment and material.

9.3 In the event that the Specification states that equipment or material is to be made available by the Customer to the Supplier in connection with the relevant Contract then the Customer will use reasonable endeavours to make available or supply to the Supplier such equipment and material upon the terms set out in the Specification.

9.4 The Supplier will at the time of taking possession of the equipment and material provided by, or on behalf, of the Customer check that it is in good condition and of a quality suitable for use and will certify any supplier's advice note or notify the Customer in writing accordingly and return any such advice note within 14 days to the Customer. The Supplier will promptly notify the Customer of any damage or loss of the Customer's equipment. In the event that the Supplier does not make available a report to the Customer, the Supplier will be responsible for any loss or damage which would have been apparent on a visual check of quantities and condition and in any event the Supplier will be responsible for any damage or loss of the equipment or material occurring whilst such equipment or material is in the Supplier's possession.

9.5 The Supplier must seek and obtain written authorisation from the Customer's contract manager for any and all equipment the Supplier intends to remove from the Site.

9.6 The Supplier will ensure that any and all equipment and material made available by the Customer and removed from the Site are securely located at the Supplier's premises and are clearly labelled as the Customer's property at all times while used in connection with the Services.

9.7 The Supplier will not and will ensure that the Supplier Personnel will not have at any time a lien, charge or encumbrance on or over any of the Customer's materials or goods.

## 10. **INTELLECTUAL PROPERTY RIGHTS**

10.1 The Intellectual Property Rights in any Customer Materials which exist at the Start Date will be and remain the property of the Customer.

10.2 The Intellectual Property Rights in any Customer Materials (and any derivations or adaptations of those Customer Materials) created on or after the Start Date will be the

property of and vest in the Customer absolutely from the time of their creation and the Supplier with full title guarantee:

10.2.1 assigns and will procure that each other Supplier Party assigns to the Customer (by way of present assignment of the future copyright) all future copyright in any Customer Materials created by it on or after the Start Date; and

10.2.2 agrees to assign and to procure that each other Supplier Party assigns to the Customer all other Intellectual Property Rights in any Customer Materials created by it on or after the Start Date

throughout the world for the whole term, including any extensions or renewals of such Intellectual Property Rights, and including the right to sue for damages and other remedies for infringements of such Intellectual Property Rights.

10.3 The Supplier will procure the irrevocable waiver of all moral rights (and any broadly equivalent rights which may exist in any territory of the world) in any Customer Materials created by the Supplier or any sub-contractor of the Supplier on or after the Start Date.

10.4 Without prejudice to any other rights granted under this Agreement:

10.4.1 the Customer will grant to the Supplier a non-assignable, non-exclusive, worldwide, royalty free licence to use the Intellectual Property Rights in the Customer Materials (and any derivations or adaptations of those Customer Materials) solely in connection with the performance of, and to the extent required to perform, the Services during the Contract Term; such right will include the right to grant sub-licences to the sub-contractors of the Supplier on terms no wider than the terms granted to the Supplier under this **clause 10.4.1**; and

10.4.2 the Supplier will, and will procure that each sub-contractor of the Supplier will, grant to the Customer a perpetual, irrevocable, non-exclusive, worldwide, royalty free licence to use, copy, translate, update, enhance, maintain and amend all Intellectual Property Rights used by it in the course of providing the Services (except for Intellectual Property Rights in Customer Materials and any derivations or adaptations of those Customer Materials); such right will include the right for the Customer to grant sub-licences on terms no wider than the terms granted to the Customer under this **clause 10.4.2**.

10.5 Save as set out in **clause 10.4**, neither party will receive any rights in respect of the Intellectual Property Rights of the other party.

10.6 To the extent that the exercise of the Supplier's rights granted under **clause 10.4.1** relates to the use of any of the Customer's logos and/or branding, the Supplier shall comply with the Customer's brand guidelines and policies as amended from time to time.

## 11. **DATA PROTECTION AND INFORMATION SECURITY**

11.1 Each Party shall comply with EU General Data Protection Regulation 2016/679 ("GDPR") and the UK Data Protection Act 2018 (as applicable) ("the Data Protection Laws") In particular where a Party ("Processor") is processing personal data on behalf of the other Party ("Controller") it shall:

11.1.1 process it only for the purposes of complying with its obligations under this Agreement, in accordance with the Controller's documented instructions from time to time and good industry practice;

11.1.2 ensure that appropriate technical and organisational measures shall be taken to ensure a level of security of Controller personal data appropriate to the risk (including measures taken against unauthorised or unlawful processing of Controller personal data and the accidental loss or destruction of, or damage to, such data) and promptly provide to the Controller details of those measures from time to time on receipt of Controller's written notice;

- 11.1.3 not transfer, or otherwise directly or indirectly disclose, any Controller personal data to a third party or to a country or territory outside the European Economic Area without the prior written consent of the Controller which may be refused or granted subject to such conditions as Controller deems necessary; and
- 11.1.4 immediately and fully notify the Controller on receipt of any notices received by the Supplier relating to the processing of Controller personal data including (but not limited to) data subject requests, complaints and/or correspondence or if any Controller personal data has been disclosed in breach of this clause or if it is lost, becomes corrupted, is damaged or is deleted in error and provide the Controller with such information and assistance as the Controller may require in relation to such notice or breach (at no cost to the Controller). The Processor shall provide and implement technical and organisational measures to help the Controller fulfil its obligations in relation to such notices from or on behalf of data subjects in connection with the rights conferred on them by Data Protection Law. For the avoidance of doubt, in no event shall the Processor respond directly to any notice relating to any Controller personal data.
- 11.2 The Processor shall comply with the provisions set out in Article 28 of the GDPR (together with any provisions referenced therein) which shall have effect as obligations on the Processor as if set out in full in this clause and the expressions "controller" and "processor" used in those provisions and incorporated in this Agreement pursuant to this clause shall be deemed references to the Controller and the Processor respectively. References to "personal data", "processing", "data subject" shall have the meanings set out in the applicable Data Protection Law.

## 12. **INDEMNITY**

- 12.1 The Supplier will indemnify the Customer against all losses (including all direct, indirect and consequential losses), liabilities, costs, damages and expenses that the Customer does or will incur or suffer, all claims or proceedings made, brought or threatened against the Customer by any person and all losses (including all direct, indirect and consequential losses), liabilities, costs (on a full indemnity basis), damages and expenses the Customer does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, in each case arising out of or in connection with the Services being provided to the Customer otherwise than in accordance with the terms of any Contract or as a result of a breach by the Supplier of the terms of this Agreement or any Contract (including any failure or delay in performing, or negligent performance or non-performance of, any of those obligations). This **clause 12.1** will not apply to any breach of, or failure or delay in performing, or negligent performance or non-performance of, any of the Supplier's obligations under **clause 15**.
- 12.2 Without prejudice to **clause 12.1**, if any person claims that the possession and/or use and/or sale of the Services or any Deliverables by the Customer and/or its customers, officers, employees, agents or sub-contractors infringes the Intellectual Property Rights of that or any other person ("**IPR Claim**"), the Supplier will indemnify, the Customer, its customers, officers, employees, agents and sub-contractors against all losses (including all direct, indirect and consequential losses), liabilities, costs, damages and expenses that the Customer, its customers, officers, employees, agents or sub-contractors do or will incur or suffer, all claims or proceedings made, brought or threatened against the Customer, its customers, officers, employees, agents or sub-contractors by any person and all losses (including all direct, indirect and consequential losses), liabilities, costs (on a full indemnity basis), damages and expenses the Customer, its customers, officers, employees, agents or sub-contractors do or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, in each case arising out of or in connection with that IPR Claim.

## 13. **INSURANCE**

- 13.1 The Supplier will, at the Supplier's own cost, maintain the required Insurances as specified in 13.2 during the Term and the term of any Contract.

- 13.2 The Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance, public liability insurance and any other insurances which the Supplier is required by Applicable Laws to maintain to cover the liabilities that may arise under or in connection with the Contract, and shall, on the University's request, produce evidence of the insurance policies and of the payment of the premiums.
- 13.1 Without prejudice to the Required Insurances to be maintained under this clause, the Supplier will ensure that it has sufficient insurances to cover legal liability (including liability assumed under this Agreement and any Contract) that may arise out of or in the course of or by reason of the Supplier's performance, non-performance or part-performance of any of its obligations under this Agreement and/or any Contract and that the Insurances extend to indemnify the Customer as principal.
- 13.2 The Supplier shall:
- 13.2.1 provide evidence satisfactory to the Customer prior to the Start Date and at least 5 Business Days prior to each anniversary of the Start Date that the Required Insurances have been effected and are in force. Where any of the Required Insurances is due for renewal during the Term (or any Contract Term as the case may be), the Supplier shall within 5 Business Days of the date of renewal also provide the Customer with satisfactory evidence that such insurance has been renewed;
  - 13.2.2 if required by the Customer, procure that prior to cancelling or changing any term of any of the Required Insurances, the insurer or insurers under any such insurances give the Customer not less than 30 days' notice of intention to cancel or make such change;
  - 13.2.3 not take or shall not fail to take any action or (insofar as it is reasonably within the Supplier's power) permit anything to occur in relation to the Supplier which would entitle any insurer to refuse to pay any claim under any of the Required Insurances;
  - 13.2.4 notify the Customer as soon as reasonably practicable in writing of any anticipated or actual event or circumstance which may lead or has led to any Insurance lapsing or being terminated or the cover under it being reduced or modified;
  - 13.2.5 notify the Customer as soon as reasonably practicable in writing upon becoming aware of any claim, event or circumstance which is likely to give rise to any claim or claims in aggregate in respect of the Services in excess of £250,000 on any of the Required Insurances and, if requested by the Customer and where not otherwise subject to an obligation of confidentiality, provide full details of such claim, event or circumstance (and such other relevant information as the Customer may reasonably require) within 3 Business Days of the Customer's request;
  - 13.2.6 promptly and diligently deal with all claims under the Required Insurances relating to the Services and in accordance with all insurer requirements and recommendations; and
  - 13.2.7 in relation to any claim settled under the Required Insurances in respect of the Services, and to the extent that the proceeds of such claim are payable to the Supplier, pay the proceeds to the person who suffered the loss or damage that gave rise to the claim (whether the Customer or any third party).
- 13.3 If the Supplier breaches any terms of this **clause 13**, then without prejudice to any of the Customer's other rights, powers or remedies, the Customer may pay any premiums required to keep any of the Required Insurances in force or itself procure such Required Insurances. In either case, the Customer may recover such premiums from the Supplier, together with all expenses incurred in procuring such Required Insurances as a debt. Further should the Customer be required to extend the period of its insurance coverage due

to the negligence or other default of the Supplier, the Supplier shall pay to the Customer the costs of the said extended insurance.

- 13.4 The Supplier will comply with the terms and conditions of the Required Insurances and all reasonable requirements of the insurers, including without limitation, in connection with the prosecution and settlement of claims, the recovery of losses and the prevention of accidents. The Supplier will bear the cost of all excesses, exclusions and limitations under the Required Insurances.
- 13.5 In relation to all the Required Insurances except as otherwise required under this **clause 13**:
- 13.5.1 the Supplier will not compromise, settle or waive any claim which the Supplier may have under the Required Insurances without the Customer's prior written consent, and
- 13.5.2 the Supplier agrees that the Customer will have the right to control and to supervise all dealings with the media in relation to any incident, event, claim or action.
- 13.6 The Supplier's liability under this Agreement and any Contract will not be restricted, limited or altered by any stipulation or arrangement in this Agreement and any Contract with regard to insurance or by any approval of insurance policies and the Supplier shall remain liable for all losses and/or damages for which the Supplier is liable.

#### 14. **CHARGES AND PAYMENT**

- 14.1 Subject to the Supplier performing its obligations in accordance with the terms of the relevant Contract, the Customer will pay the Charges to the Supplier in accordance with this **clause 14**.
- 14.2 The only monies to be paid by the Customer in connection with the supply of the Services are the Charges which will be inclusive of all costs and expenses incurred by the Supplier including all travel, accommodation and subsistence expenses unless otherwise specified in the Purchase Order.
- 14.3 Any sum payable under this Agreement and/or any Contract is exclusive of value added tax (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority) which will be payable in addition to that sum in the manner and at the rate prescribed by law from time to time, subject to receipt by the paying party of a valid value added tax invoice.
- 14.4 The Supplier will invoice the Customer for the Charges following the performance of the Services.
- 14.5 Each invoice will be a valid VAT invoice and will contain the following information:
- 14.5.1 the Customer's Purchase Order number;
- 14.5.2 A unique Invoice Number;
- 14.5.3 The letterhead of the Supplier.
- and will be sent to the Customer at the following email address (or such other address and/or individual as may be notified by the Customer to the Supplier from time to time):
- purchase.invoices@hud.ac.uk
- 14.6 Subject to **clauses 14.7, 14.8, 14.9, 14.10** and **14.12**, each invoice will be payable by the Customer within 30 days following the date on which the invoice is received by the Customer.

- 14.7 The Customer will not be liable to pay any sums in respect to any invoice that:
- 14.7.1 is not submitted strictly in accordance with **clause 14.5**; or
  - 14.7.2 is not received by the Customer within twelve months following the date of the completion of the provision of the Services.
- 14.8 Notwithstanding any purported contrary appropriation by the Supplier, the Customer will be entitled, by giving written notice to the Supplier, to appropriate any payment by the Customer to any invoice issued by the Supplier.
- 14.9 No payment made by the Customer will constitute acceptance or approval by the Customer of the Services or otherwise prejudice any rights or remedies which the Customer may have against the Supplier including the right to recover any amount overpaid or wrongfully paid to the Supplier.
- 14.10 If the Customer, on bona fide grounds, disputes any part of an amount invoiced by the Supplier (a "**Disputed Sum**"), the Customer will, within thirty days of the date of receipt of the relevant invoice, notify the Supplier in writing of such dispute giving details of the nature of the dispute and the amount that it claims should have been invoiced and:
- 14.10.1 the Customer will pay that part of the invoice which is not the Disputed Sum in accordance with **clause 14.6**;
  - 14.10.2 the Customer will be entitled to withhold payment of the Disputed Sum;
  - 14.10.3 the parties will negotiate in good faith to resolve the dispute, but if a resolution cannot be reached within thirty days of the Customer giving notice under this **clause 14.10, clause 30** will apply to the dispute;
  - 14.10.4 the Supplier will provide all such information and evidence as may be reasonably necessary to verify the Disputed Sum; and
  - 14.10.5 following resolution of the dispute the Customer will, within thirty days, pay to the Supplier that part of the Disputed Sum (if any) as it is resolved is payable by the Customer.

For the avoidance of doubt, if the Customer fails to notify any dispute about the amount of an invoice to the Supplier in accordance with this **clause 14.10**, this will not constitute a waiver of the Customer's right to dispute the amount of that invoice.

- 14.11 If any sum payable under this Agreement and/or any Contract is not paid on or before the due date for payment the Supplier will be entitled to charge the Customer interest on that sum at 2% per annum above the base lending rate from time to time of Lloyds Bank Plc from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis. Such interest will not be chargeable on any Disputed Sum, provided that if it is agreed or determined that part or all of the Disputed Sum is payable, interest will be chargeable on the relevant part of the Disputed Sum in accordance with this **clause 14.10** but from the date on which payment of that sum is due in accordance with settlement of the dispute rather than from the date on which payment of the original invoice which included that sum was originally due. The parties agree that this **clause 14.10** is a substantial remedy for late payment of any sum payable under this Agreement or any Contract, for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 14.12 The Customer will be entitled to set-off any liability which the Supplier has to the Customer against any liability which the Customer has to the Supplier, whether such liability is present or future, liquidated or unliquidated, under this Agreement and/or any Contract or any other contract between the parties or other cause of action.



15. **ANTI-CORRUPTION**

15.1 The Supplier will, and will procure that Supplier Personnel will:

15.1.1 not commit any act or omission which causes or could cause the Customer or the Supplier to breach, or commit an offence under, any laws relating to anti-bribery and/or anti-corruption;

15.1.2 comply with the Customer's anti-corruption policy as updated from time to time;

15.1.3 keep accurate and up to date records showing all payments made and received and all other advantages given and received in connection with this Agreement and any Contract and the steps taken to comply with this **clause 15.1**, and permit the Customer to inspect those records as reasonably required;

15.1.4 promptly notify the Customer of:

15.1.4.1 any request or demand for any financial or other advantage received by the Supplier or Supplier Personnel; and

15.1.4.2 any financial or other advantage the Supplier or Supplier Personnel give or intend to give,

whether directly or indirectly in connection with this Agreement and/or any Contract; and

15.1.5 promptly notify the Customer of any breach of this **clause 15.1**.

15.2 The Customer may terminate this Agreement and/or any Contract immediately by giving written notice to that effect to the Supplier if the Supplier is in breach of **clause 15.1**.

15.3 The Supplier warrants that it is compliant with all Applicable Law.

15.4 The Supplier will indemnify the Customer against all losses (including all direct, indirect and consequential losses), liabilities, costs, damages and expenses that the Customer does or will incur or suffer, all claims or proceedings made, brought or threatened against the Customer by any person and all losses (including all direct, indirect and consequential losses), liabilities, costs (on a full indemnity basis), damages and expenses the Customer does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, in each case arising out of or in connection with any breach of any of the Supplier's obligations under **clause 15.1**.

16. **PREVENTION OF TAX EVASION**

16.1 The Supplier will, and will procure that its officers, employees, agents, sub-contractors and any other persons who perform services for or on behalf of it in connection with this Agreement and any Contract will:

16.1.1 not do or omit to do any act or thing which constitutes or may constitute a UK tax evasion offence, a foreign tax evasion offence (as those terms are defined in the CFA) or a Facilitation of Tax Evasion Offence;

16.1.2 not do or omit to do any act or thing which causes or may cause the Customer to commit a CFA Offence;

16.1.3 without prejudice to **clause 16.1.2**, not do or omit to do any act or thing which would cause the Customer to commit a CFA Offence or may do so if the Customer was unable to prove that it had in place prevention procedures as referred to in section 45(2) or section 46(4) of the CFA; and

16.1.4 provide the Customer (at the Supplier's cost) with such assistance as it may require from time to time to enable it to perform any activity required by any

relevant Authority in any relevant jurisdiction for the purpose of compliance with any proceeds of crime, anti-money laundering or prevention of tax evasion law (including the CFA) or to enable it to self-disclose any conduct to or to co-operate with any Authority.

- 16.2 The Supplier warrants to the Customer that it has not, and its officers, employees, agents, sub-contractors and any other persons who perform services for or on behalf of it in connection with this Agreement and any Contract have not:
- 16.2.1 been convicted in any jurisdiction of any offence of cheating the public revenue, fraudulently evading any tax or facilitating the fraudulent evasion of any tax or been the subject of any agreement (including any deferred prosecution agreement or similar arrangement) with any Authority concerning any such offence or alleged offence;
  - 16.2.2 done or omitted to do any act or thing which caused or may cause any person to commit an offence under the CFA (or would or may do so if the relevant person was unable to prove that it had in place prevention procedures as referred to in section 45(2) or section 46(4) of the CFA);
  - 16.2.3 been, and are not, the subject of any investigation, enquiry or enforcement proceedings by any Authority regarding any offence or alleged offence of cheating the public revenue, fraudulently evading any tax or facilitating the evasion of any tax in each case in any jurisdiction;
  - 16.2.4 has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts including any exclusion under regulation 57 of the Public Contracts Regulations 2015 or regulation 80 of the Utilities Contracts Regulations 2016 by reason of it doing any act or thing which constitutes a UK tax evasion offence or a foreign tax evasion offence (as those terms are defined in the CFA) or a Facilitation of Tax Evasion Offence, or being under investigation in respect of any of the same.
- 16.3 The Supplier will immediately give written notice to the Customer upon the occurrence of a breach or suspected breach of any of its obligations under this **clause 16**.
- 16.4 The Customer may terminate this Agreement and/or any Contract immediately by giving written notice to that effect to the Supplier if the Supplier is in breach of any of its obligations under this **clause 16** or if the Customer has reasonable cause to believe that the Supplier has facilitated fraudulent evasion of any tax.
- 16.5 The Customer will be entitled, by giving written notice to that effect to the Supplier, to require the Supplier to remove from the performance of this Agreement and/or any Contract any of its officers, employees, agents, sub-contractors and any other persons who perform services for or on behalf of it in connection with this Agreement and/or any Contract and in respect of whom the Supplier is in breach of any of its obligations under **clause 16.1** or any of its warranties under **clause 16.2**.
- 16.6 The Supplier will ensure that any person associated with the Supplier (as determined in accordance with section 44 Criminal Finances Act 2017) who is performing services in connection with this Agreement and/or any Contract and any sub-contractor does so only on the basis of a written contract which imposes on and secures from such person and any such sub-contractor terms equivalent to those imposed on the Supplier by this **clause 16**. The Supplier will be responsible for the observance and performance by such persons and sub-contractors of those terms and will be directly liable to the Customer from any breach by such persons and sub-contractors of any of such terms.

## 17. **MODERN SLAVERY**

- 17.1 The Supplier will:

- 17.1.1 not engage in any Modern Slavery Practice;
  - 17.1.2 conduct proper and adequate checks on any agency or person used to provide Services to ensure that any such agency or person does not engage in any Modern Slavery Practice;
  - 17.1.3 provide the Customer with such assistance and information as the Customer may require from time to time to enable the Customer to comply with Anti-Slavery Laws; and
  - 17.1.4 permit the Customer, and any person nominated by the Customer to have such access on demand to the Supplier's premises, personnel, systems, books and records as the Customer may require to verify the Supplier's compliance with this **clause 17**.
- 17.2 The Supplier will immediately give written notice to the Customer upon a breach, or suspected breach, of any of the Supplier's obligations referred to in **clause 17.1** occurring.
- 17.3 The Customer may terminate this Agreement and/or any Contract immediately by giving written notice to that effect to the Supplier if the Supplier is in breach of obligations under **clause 17.1**.
- 17.4 The Customer will be entitled, by giving written notice to that effect to the Supplier, to require the Supplier to:
- 17.4.1 remove from the performance of this Agreement and/or any Contract any of the Supplier Personnel whom the Customer believes to be engaging in any Modern Slavery Practice; or
  - 17.4.2 take such action as the Customer requires to ensure that the Supplier fully complies with any Anti-Slavery Law.

18. **RACE RELATIONS**

The Supplier will not unlawfully discriminate within the meaning and scope of any law or regulation relating to discrimination (whether in race, gender, religion, disability, age, sexual orientation or otherwise) in employment. The Supplier shall take all reasonable steps to secure the observance of this provision by the Supplier's Personnel.

19. **ENVIRONMENT**

- 19.1 The Supplier agrees to provide Services which accord with the Customer's policy on the environment. The Supplier shall, when working at the Site, perform the Contract in accordance with the Customer's environmental policy, which includes, but is not limited to, conservation of energy, water, wood, paper and other resources, reduction of waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

20. **EXCLUSION AND LIMITATION OF LIABILITY**

- 20.1 Subject to **clauses 20.3** and **20.4**, each party's maximum aggregate Property Liability will be limited to £5,000,000.
- 20.2 Subject to **clauses 20.3** and **20.4**, each party's maximum aggregate Liability, but excluding any Property Liability, will be limited to £1,000,000.
- 20.3 Nothing in this Agreement or any Contract will operate to exclude or restrict a party's Liability (if any) to the other:

- 20.3.1 for death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable (negligence being as defined in Section 1(1) Unfair Contract Terms Act 1977);
- 20.3.2 for its fraud or fraudulent misrepresentation, the fraud or fraudulent misrepresentation by a person for whom it is vicariously liable;
- 20.3.3 for breach of its obligations arising under section 12 Sale of Goods Act 1979;
- 20.3.4 for breach of its obligations arising under Section 2 Supply of Goods and Services Act 1982; or
- 20.3.5 for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

Any Liability of a party which falls within this **clause 20.3** will not be taken into account in assessing whether the financial limit in **clause 20.1** or **20.2** has been reached.

20.4 Without prejudice to **clause 20.3**, nothing in this Agreement or any Contract will operate to exclude or restrict the Supplier's liability:

- 20.4.1 for any breach of **clause 111** (Data Protection and Information Security);
- 20.4.2 for any breach of **clause 15** (Anti-corruption);
- 20.4.3 under **clause 10** (Intellectual Property Rights);
- 20.4.4 for any breach of **clause 24** (Confidentiality); and/or
- 20.4.5 for a deliberate breach of this Agreement or any Contract by the Supplier.

Any Liability of the Supplier which falls within this **clause 20.4** will not be taken into account in assessing whether the financial limit in **clause 20.1** or **20.2** has been reached.

20.5 Nothing in this **clause 20** will prevent or restrict the right of a party to seek injunctive relief or specific performance or other discretionary remedies of the court.

## 21. **TERMINATION OF CONTRACT**

21.1 The Customer may terminate a Contract by giving not less than 30 days' written notice to that effect to the Supplier, such notice to expire at any time.

21.2 If the Supplier commits:

- 21.2.1 a material breach of a Contract; or
- 21.2.2 more than [3] breaches of a Contract in any rolling period of [six months], whether such breaches are of the same, similar or different provisions of the Contract,

whether or not such breaches have been remedied and/or can be remedied, the Customer may terminate that Contract immediately by giving written notice to that effect to the Supplier.

- 21.3 The Customer may terminate any Contract immediately by giving written notice to that effect to the Supplier if the Supplier becomes Insolvent and the Supplier will notify the Customer in writing immediately upon the occurrence of such event or circumstance.
- 21.4 Following expiry or termination of a Contract:
- 21.4.1 any terms which expressly or impliedly continue to have effect after expiry or termination of that Contract will continue in force; and
  - 21.4.2 all other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.
- 21.5 If the Customer terminates a Contract in accordance with **clauses 15.2, 17.3, 21.2, and/or 21.3**, without prejudice to the Customer's other rights under this Agreement and/or any Contract or otherwise:
- 21.5.1 the Customer will be entitled to claim damages for any loss it suffers in relation to the Supplier's failure to supply the Services in accordance with that Contract;
  - 21.5.2 the Customer will be entitled to reject part or all of the Deliverables already delivered, and in such circumstances the Customer will return the Deliverables (or the relevant parts of them) to the Supplier and the Supplier will, within 30 days of the date on which the Contract terminates, refund to the Customer all monies paid under that Contract (less the amount of any reduced Charges (as is equitable) which are to be paid for any of the Deliverables or any part of them which the Customer chooses to accept (if applicable)); and
  - 21.5.3 if the Customer wishes to complete the Services (or any part of them) itself or to enter into a contract with a third party to effect such completion:
    - 21.5.3.1 the Supplier will provide all such information and assistance as the Customer and any third party contractors may require in connection with completion of the supply;
    - 21.5.3.2 the Supplier will pay to the Customer the amount by which the reasonable cost to the Customer of completion of the Services (or the relevant part of them) exceeds the relevant part of the Charges and the Customer may recover such amount as a debt due from the Supplier; and
    - 21.5.3.3 the Customer will be entitled to use or have used on its behalf free of charge all Intellectual Property Rights owned or controlled by the Supplier used in or in connection with the Services for the purposes of completion of the obligations which were to be performed by the Supplier under that Contract.

## 22. **TERMINATION OF THIS AGREEMENT**

- 22.1 The Customer may terminate this Agreement by giving not less than 30 days' written notice to that effect to the Supplier, such notice to expire at any time.
- 22.2 If the Supplier commits:
- 22.2.1 a material breach of this Agreement; or
  - 22.2.2 more than [3] breaches of this Agreement in any rolling period of [six months], whether such breaches are of the same, similar or different provisions of this Agreement,

whether or not such breaches have been remedied and/or can be remedied, the Customer may terminate this Agreement immediately by giving written notice to that effect to the Supplier.

22.3 The Customer may terminate this Agreement immediately by giving written notice to that effect to the Supplier if the Supplier becomes Insolvent and the Supplier will notify the Customer in writing immediately upon the occurrence of such event or circumstance.

22.4 Following the Termination Date:

22.4.1 any terms which expressly or impliedly continue to have effect after expiry or termination of this Agreement will continue in force; and

22.4.2 all other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the Termination Date.

22.5 Within 30 days after the Termination Date each party will, subject to the exception set out in **clause 22.6**:

22.5.1 if requested to do so, return to the other party all of the other party's Confidential Information (including all copies and extracts); and

22.5.2 cease to use the other party's Confidential Information.

22.6 Each party may retain any of the other party's Confidential Information which it has to keep to comply with any Applicable Law. The provisions of **clause 24** will continue to apply to retained Confidential Information.

## 23. **HANDOVER**

23.1 The Supplier will provide, at no cost, such reasonable assistance to the Customer and to any third party nominated by the Customer as is required to migrate a Contract to a new supplier effectively and efficiently. In particular, (but without limitation) the Supplier will, where so required provide all reasonable help, assistance and co-operation:

23.1.1 in the transfer of the provision of all facilities associated with the provision of the Services from the Supplier to the Customer and/or to the new supplier (the "**Successor Supplier**"); and

23.1.2 to effect the transfer of such documentation as is necessary to enable the Successor Supplier or the Customer to set up and effect the changeover.

23.2 Without prejudice to the above, the Supplier will on or prior termination of any Contract transfer to the Customer such documentation relating to the Services as the Customer may request.

23.3 The Supplier's obligation to effect a smooth transfer of records, information, functions and the like in relation to the Services, either to the Customer or a Successor Supplier will be carried out in such a manner so as not to interfere with use and enjoyment of the Services and without the Customer's business being unduly disrupted or hindered. For the avoidance of doubt and notwithstanding other provisions contained in this Agreement and/or any Contract the Supplier will be obliged to meet the requirements of this Agreement and each Contract whilst complying with obligations contained this clause.

## 24. **CONFIDENTIALITY**

24.1 Each party will, subject to **clause 24.2**:

24.1.1 only use the other party's Confidential Information for the purpose of performing its obligations and exercising its rights under this Agreement and/or any Contract;

- 24.1.2 keep the other party's Confidential Information secret, safe and secure; and
- 24.1.3 not disclose the other party's Confidential Information to any other person.
- 24.2 Each party may disclose the other party's Confidential Information:
  - 24.2.1 to the extent required by law or any court of competent jurisdiction or the rules of any governmental or regulatory body; and
  - 24.2.2 to those of its officers, directors, employees and professional advisers and, in the Customer's case, its agents and sub-contractors, who need access to that Confidential Information so that it can perform its obligations and exercise its rights under this Agreement and/or any Contract. A party disclosing the other party's Confidential Information under this **clause 24.2.2** will procure that each person to whom it discloses that Confidential Information will not do or omit to do anything which if done or omitted to be done by that party would be a breach of this **clause 24**.
- 24.3 For the purposes of this **clause 24**, "**Confidential Information**" means the terms of this Agreement and/or any Contract and any information that relates to a party (or any of its or businesses) and which is disclosed to the other party in connection with this Agreement and any Contract, but excluding information that:
  - 24.3.1 is at the relevant time in the public domain (other than by virtue of a breach of this **clause 24**);
  - 24.3.2 was received by the other party from a third party who did not acquire it in confidence; or
  - 24.3.3 is developed by the other party without any breach of this Agreement and/or any Contract.
- 25. **FREEDOM OF INFORMATION**
- 25.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
  - 25.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;
  - 25.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Business Days of receipt;
  - 25.1.3 provide the Customer with a copy of all Information held on behalf of the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Business Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
  - 25.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 25.2 The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information without consulting or obtaining consent from the Supplier. the Customer shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement and/or any Contract) the Customer shall be responsible for determining

in its absolute discretion whether any Information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## 26. **AUDIT**

- 26.1 The Supplier shall keep secure and maintain until two years after the final payment of all sums due under each Contract, or such longer period as may be agreed between the parties, full and accurate records of the Services and expenditure reimbursed by the Customer and all payments made by the Customer.
- 26.2 The Supplier shall provide the Customer or the Customer's authorised agents, such access to those records as may be reasonably required in order to assess the Supplier's compliance with any Contract.

## 27. **NOTICE**

- 27.1 Subject to **clause 27.4**, any notice or other communication given under or in connection with this Agreement or any Contract will be in writing and:

- 27.1.1 sent to the relevant party's address by pre-paid first class post; or
- 27.1.2 delivered to or left at the relevant party's address (but not, in either case, by the method set out in **clause 27.1.1**.

and, in the case of any notice or other communication to be given to the Customer, marked for the attention of the Customer's specified representative.

- 27.2 Any notice or communication given in accordance with **clause 27.1** will be deemed to have been served:

- 27.2.1 if given by first class post as set out in **clause 27.1.1**, at 9.00am on the third day after the date of posting; and
- 27.2.2 if given as set out in **clause 27.1.2**, at the time the notice or communication is delivered to or left at that party's address.

provided that if a notice or communication is deemed to be served before 9.00am on a Business Day it will be deemed to be served at 9.00am on that Business Day and if it is deemed to be served on a day which is not a Business Day or after 5.00pm on a Business Day it will be deemed to be served at 9.00am on the immediately following Business Day.

- 27.3 To prove service of a notice or communication it will be sufficient to prove that the provisions of **clause 27.1** were complied with.
- 27.4 This **clause 27** will not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.

## 28. **ASSIGNMENT AND SUB-CONTRACTING**

- 28.1 The Supplier will not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under this Agreement or any Contract without the Customer's prior written consent (such consent may be withheld or delayed in the Customer's sole discretion).
- 28.2 The Customer will be entitled to assign, transfer, charge, hold on trust for any person and deal in any other manner with any of its rights under this Agreement or any Contract.
- 28.3 The Supplier will not be entitled to sub-contract any of its obligations under this Agreement or any Contract without the prior written consent of the Customer (such consent may be withheld or delayed in the Customer's sole discretion). Any sub-contracting will not relieve the Supplier from its liabilities to the Customer under this Agreement or any Contract and



the Supplier will be liable to the Customer for the acts and omissions of its sub-contractors in relation to this Agreement and any Contract.

28.4 The Customer will be entitled to sub-contract any of its obligations under this Agreement and/or any Contract.

## 29. GENERAL

29.1 This Agreement and all Contracts constitute the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:

29.1.1 neither party has entered into this Agreement in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made by the first party or any other person) which is not expressly set out in this Agreement;

29.1.2 neither party has entered into any Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made by the first party or any other person) which is not expressly set out in that Contract; and

29.1.3 nothing in this **clause 29.1** will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

29.2 Nothing in this **clause 29** will prevent or restrict the right of a party to seek injunctive relief or specific performance or other discretionary remedies of the court.

29.3 A delay in exercising or failure to exercise a right or remedy under or in connection with this Agreement or any Contract will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.

29.4 If any term of this Agreement or any Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from this Agreement or the relevant Contract and this will not affect the remainder of this Agreement or the relevant Contract which will continue in full force and effect.

29.5 Save as otherwise expressly provided in this Agreement, no variation to this Agreement or any Contract will be effective unless it is in writing and signed by a duly authorised representative on behalf of each of the parties.

29.6 Nothing in this Agreement or any Contract and no action taken by the parties in connection with it or them will create a partnership or joint venture between the parties or give either party authority to act as the agent of or in the name of or on behalf of the other party or to bind the other party or to hold itself out as being entitled to do so.

29.7 Each party agrees that it is an independent contractor and is entering into this Agreement and all Contracts as principal and not as agent for or for the benefit of any other person.

29.8 The parties do not intend that any term of this Agreement or any Contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

29.9 The Customer's rights and remedies set out in this Agreement and Contracts are in addition to and not exclusive of any rights and remedies provided by law.

30. **GOVERNING LAW AND JURISDICTION**

- 30.1 This Agreement and any and all Contracts and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.
- 30.2 The courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement and any Contract (including in relation to any non-contractual obligations).