

SOPRA STERIA LIMITED
PURCHASE ORDER TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In addition to those terms that are defined in the accompanying Purchase Order, the following terms have the following meanings:

“**Affiliate**” means any member of the Customer Group;

“**Agreement**” means this agreement, consisting of a Purchase Order together with the substantive terms set out in the following Clauses;

“**AI Generative Tools**” means any products, software, systems or tools (procured from a third party or otherwise) employing artificial intelligence technology, which are capable of generating content in the form of text, images and other media using generative models;

“**Applicable Law**” means any and all applicable rules of law, statutes, statutory instruments, directives, regulations, orders and other instruments having the force of law and any applicable codes of conduct, guidance, directions and/or determinations with which Customer, any relevant member of the Customer Group or Supplier (as applicable) is bound to comply;

“**Background Elements**” means those elements of the Deliverables which were created by or on behalf of Supplier prior to and/or independently of the provision of the Services;

“**Business Day**” means any day (other than a Saturday, Sunday or a public holiday in England) on which the clearing banks in the City of London are open for the transaction of normal sterling banking business;

“**Business Hours**” means the period from 9.00 am to 5.00 pm on any Business Day;

“**Charges**” means the fees detailed in the relevant Purchase Order;

“**Claim**” has the meaning given to that term in Clause 7.1.1;

“**Confidential Information**” means information that is designated as 'confidential' or which by its nature is clearly confidential and includes any and all know-how, documentation and information, whether commercial, financial, technical, operational or otherwise relating to the business, affairs, customers, suppliers or methods of one party and disclosed to or otherwise obtained by the other party in connection with this Agreement;

“**Customer Data**” means all information, materials and data, including Personal Data that is: (i) Processed by, or on behalf of Supplier; or (ii) created or generated by Supplier; or (iii) made available or accessible to Supplier, and in each case, under or in connection with this Agreement;

“**Customer Group**” means: (i) any holding company of Customer and any holding company or subsidiary of such holding company and any subsidiary of Customer for the time being (as these terms are defined in section 1159 of the Companies Act 2006) together with; (ii) NHS Shared Business Services Limited (a company registered in England and Wales with number 05280446) whose registered office is at Three, Cherry Trees Lane, Hemel Hempstead, Hertfordshire, HP2 7AH; and (iii) any other joint venture

entity that Customer and Supplier may from time to time agree in writing should constitute a member of the “Customer Group”;

“**Customer Policies**” means such policies of Customer as notified to Supplier by Customer from time to time;

“**Customer Property**” means all software, programs, documents, information, data, ideas, concepts, know-how, techniques and other materials, things or items (including all Intellectual Property therein) supplied or provided by Customer or any member of the Customer Group;

“**Data Protection Legislation**” means any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction which relates to the protection of individuals with regards to the Processing of Personal Data to which a party is subject in relation to this Agreement, including the UK Data Protection Legislation and the EU Data Protection Legislation (as applicable), and any code of practice or guidance published by a Regulator from time to time;

“**Data Subject Request**” means an actual or purported request or notice or complaint from (or on behalf of) a Data Subject exercising his or her rights under the Data Protection Legislation that relates to Customer Data;

“**Deliverables**” means the Services and / or Goods required to be supplied under the terms of any given Purchase Order;

“**Effective Date**” means the date of the relevant Purchase Order;

“**EU Data Protection Legislation**” means (a) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of Personal Data and repealing Directive 95/46/EC (General Data Protection Regulation) (“EU GDPR”), as supplemented by the domestic legislation of each Member State, and as amended, replaced or superseded from time to time; and (b) any national legislation implementing Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the Processing of Personal Data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), and as amended, replaced or superseded from time to time;

“**FCA**” means the Financial Conduct Authority, or any successor body which replaces it;

“**GDPR**” means the EU GDPR or the UK GDPR, as the context requires;

“**Goods**” means any goods and related accessories, spare parts, software and documentation and other physical material more particularly described in the applicable Purchase Order;

“**Intellectual Property**” means any and all intellectual property rights as may now or in the future exist, including patents, trademarks, design rights, moral rights, copyright and related rights, rights in databases, domain names, topography rights, know-how, look and feel, rights in Confidential Information and all similar rights (whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world) together with the right to apply for registration of and/or register such rights any and all goodwill relating or attached thereto and all extensions and renewals thereof;

“**Intermediary**” means any entity through which a Resource is contracted, other than Supplier and any PSC;

“**ICO**” means the UK Information Commissioner's Office, or any successor body which replaces it;

“**ITEPA**” means the Income Tax (Earnings and Pensions) Act 2003;

“**New Supplier**” means any alternative supplier appointed by Customer to supply the Services or any services in replacement for all or part of the Services;

“**PSC**” means a limited company or partnership which meets the conditions specified in sections 61O or 61P, as applicable, of ITEPA, (or such other conditions as may apply from time to time for the purpose of determining whether a company or partnership is of a type which is potentially subject to the legislation concerning provision of workers' services through intermediaries);

“**Purchase Order**” means a document bearing that title which has been issued by Customer to Supplier and under the terms of which Supplier shall commence its provision of Services, associated Deliverables and Goods (where applicable);

“**Regulator**” means any regulator or regulatory body (including but not limited to the FCA and the ICO) to which a member of the Customer Group is subject from time to time and whose consent, approval or authority is required so that a member of the Customer Group can lawfully carry on its business;

“**Relevant Associates**” means any employee, agent, supplier or any other person acting for or on behalf of the relevant person or entity;

“**Resource**” means any individual who is involved in the provision of Services (including, without limitation, any individual named in the governing contract or any individual that Customer is able to specify as being involved in the provision of the Services);

“**Security Requirements**” means the requirements regarding the security of Personal Data, as set out in the Data Protection Legislation (including in particular the measures set out in Article 32(1) of the GDPR, taking due account of the matters described in Article 32(2) of the GDPR) and the requirements set out in Clause 4 (Access and Security) of this Agreement;

“**Services**” means the services more particularly described in the applicable Purchase Order;

“**Special Category Personal Data**” means Personal Data that reveals such categories of data as are listed in Article 9(1) of the UK GDPR;

“**Supplier Code of Conduct**” means the document bearing that title dated February 2023 as published by Customer and as updated from time to time by Customer;

“**TUPE**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or re-enacted from time to time).

“**UK Data Protection Legislation**” means (a) the Privacy and Electronic Communications Regulations 2003; (b) the Data Protection Act 2018; and (c) the EU GDPR, as each is amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended) and as incorporated into the law of England and Wales, Scotland, and Northern Ireland under the European Union (Withdrawal) Act 2018, each being referred to as “**PECR**”, the “**DPA 2018**” and the “**UK GDPR**” accordingly; and

“Warranty Period” means a period of twelve (12) months from the date of Customer’s acceptance of any given Deliverable.

1.2 In this Agreement:

1.2.1 any reference to the singular shall include the plural and vice versa and any reference to one gender shall include all genders including the neuter gender;

1.2.2 any reference to a person shall, unless the context otherwise requires, include individuals, partnerships, companies and all other legal persons (in each case whether or not having separate legal personality and irrespective of their jurisdiction of origin, incorporation or residence);

1.2.3 the words “include”, “includes”, “including” and “included” will be construed without limitation unless inconsistent with the context; and

1.2.4 any reference to Applicable Law or to any statute, statutory instrument, directive, regulation, order or other enactment shall mean the same as shall be amended, enacted, re-enacted, replaced, extended, modified, consolidated or repealed from time to time.

2. THE DELIVERABLES

2.1 Supplier shall, for the duration of this Agreement, provide the Services and supply the Deliverables in accordance with this Agreement.

2.2 Supplier must not use any AI Generative Tools to provide all or part of the Services or Deliverables without the prior written consent of Customer. If Customer has provided such consent, Supplier must obtain Customer’s further consent before making any changes to its use of such AI Generative Tools when providing the Services and acknowledges that any failure to comply with this Clause shall be a material breach of this Agreement.

2.3 If any defect or non-conformity is discovered in any Deliverables within the relevant Warranty Period, Supplier shall promptly remedy the same without cost to Customer.

3. SUPPLY OF GOODS

3.1 Where the Purchase Order confirms that this Agreement includes the supply of Goods, unless otherwise agreed by the parties in writing, full legal title, beneficial interest and risk in the Goods will transfer to Customer at the point that Customer’s representative accepts delivery of the Goods at the relevant delivery location. Following acceptance of the Goods by Customer’s representative, Supplier may issue its invoice for the Goods concerned to Customer in accordance with Clause 5.

3.2 If installation and operation of the Goods is conditional on preparatory work being carried out at any relevant Customer Premises, Supplier must give Customer written details of those requirements and provide any assistance (without any additional charge) that Customer may reasonably require to ensure that those preparations are completed on time.

3.3 Supplier shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods. Supplier shall not unreasonably refuse any request by Customer to inspect and test the Goods during manufacture, processing or storage at the premises of Supplier or any third party prior to despatch, and Supplier shall provide Customer with all facilities reasonably required for inspection and testing. If as a result of inspection or testing Customer is not

satisfied that the Goods will comply in all respects with this Agreement, and Customer so informs Supplier within seven (7) days of inspection or testing, Supplier shall take such steps as are necessary to ensure compliance. The Goods shall be marked in accordance with Customer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

3.4 Without prejudice to any other rights or remedies available to Customer under this Agreement or more generally, where some or all of the Goods are found by Customer to be faulty or where Supplier is in breach of any of the warranties or representations detailed in Clause 3.3, Customer shall be entitled to:

3.4.1 reject the Goods (in whole or in part), whereupon Supplier shall within five (5) Business Days of receipt of any notice to that effect, refund to Customer any Charges paid by Customer in respect of those Goods; and/or

3.4.2 require Supplier to replace the Goods concerned within 2 Business Days of receipt of a notice from Customer to that effect (or such longer period as may be agreed in writing between the parties),

it being agreed that in either case, Supplier shall (at Supplier's sole cost and expense) collect the non-functioning Goods and (where applicable) deliver and install suitable replacements. Where Customer exercises its right to reject / cancel in accordance with this Clause, and does not require replacement Goods, Customer shall cease to be bound to pay that part of the Charges which relates to Goods which have been rejected or cancelled.

3.5 In respect of the supply of any applicable electrical Goods, Supplier undertakes from a regulatory compliance perspective to perform the role of distributor in connection with the provision of the Goods. As such, Supplier shall ensure that any waste in connection with the supply of the Goods can be returned to Supplier at least free of charge on a one to one basis as long as the equipment to be disposed of is of an equivalent type and has fulfilled the same functions as the Goods.

4. ACCESS & SECURITY

4.1 Supplier shall and shall procure that all personnel involved in the provision of the Deliverables when in attendance at Customer's premises shall, at all times observe and comply with any and all health and safety, security and other policies notified by Customer in relation to such premises together with any and all further reasonable instructions or warnings given by Customer orally or in writing from time to time.

4.2 Supplier has and shall at all times maintain and comply with and will procure that its personnel are trained in and shall at all times comply with documented policies and procedures sufficient to maintain the physical and electronic security of Customer's Confidential Information.

5. CHARGES

5.1 In consideration of Supplier's provision of the Deliverables in accordance with the provisions of this Agreement, Customer shall pay the Charges in accordance with this Clause 5 and the relevant Purchase Order. Unless otherwise expressly set out in the relevant Purchase Order, the obligation to pay the Charges shall constitute Customer's entire payment liability to Supplier for the performance of Supplier's obligations and the Charges are inclusive of all costs and expenses directly or indirectly incurred by Supplier in connection with its performance of the Deliverables.

- 5.2 Supplier shall submit invoices in accordance with the payment arrangements detailed in the Purchase Order. Each invoice must be submitted electronically in accordance with the requirements of Customer as notified to Supplier from time to time and shall specify the appropriate Customer purchase order number and contact and shall contain any additional information provided for in this Agreement. Supplier shall not be entitled to invoice Customer in respect of any Charges if more than six (6) calendar months have expired since delivery and acceptance of the relevant Deliverables.
- 5.3 Charges are payable within thirty (30) days of Customer's receipt of Supplier's properly submitted invoice and are inclusive of all taxes, charges, duties and levies except any applicable VAT which Customer shall pay in addition to the Charges at the rate and in the manner prescribed by Applicable Law from time to time subject to receipt of a valid VAT invoice. Customer may, without limiting its other rights or remedies, set off any amount owed to it by Supplier under this Agreement against any amount payable by Customer to Supplier under this Agreement or otherwise, unless such sum is the subject of a dispute.
- 5.4 Supplier shall be entitled to simple interest on undisputed overdue sums at the rate of two percent (2%) per annum above the base lending rate for the time being of the Bank of England, from the date on which the overdue sum became due, until it is paid. The parties agree that this Clause 5.4 is a substantial remedy for late payment of any sum payable under this Agreement in accordance with section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.

6. WARRANTIES AND REPRESENTATIONS

- 6.1 Supplier warrants and represents that:
- 6.1.1 it has full capacity and authority and all necessary consents to enter into and to perform its obligations under this Agreement;
 - 6.1.2 it shall provide the Deliverables with reasonable skill and care using appropriately trained, qualified and experienced staff and in accordance with:
(i) good industry practice; and (ii) the Supplier Code of Conduct;
 - 6.1.3 it shall comply with all Applicable Law including, but not limited to, the Bribery Act 2010 and the Modern Slavery Act 2015;
 - 6.1.4 neither it nor its Relevant Associates are involved or have been involved in any contract, agreement or other arrangement of any kind which could or may result in tax evasion or the facilitation thereof;
 - 6.1.5 it shall not unlawfully discriminate on the basis of colour, nationality, race, religion/belief, ethnic origin, sex, marital status, disability, part-time or fixed term status, parental responsibilities, age or sexual orientation. Supplier agrees to observe and comply with and shall procure that its employees, agents, and sub-contractors (if any) observe and comply with any relevant legislation or regulations from time to time in force including, but not limited to, any relevant codes of practice published by the Equality and Human Rights Commission, and with Supplier's own relevant internal policies and such other policies as may be notified to Supplier from time to time by Customer;
 - 6.1.6 receipt of and/or ownership and/or use of the Deliverables will not infringe the Intellectual Property rights or other rights of any third party;
 - 6.1.7 the Deliverables will be free of any computer viruses, data related coding or any other harmful software code which may cause an interruption to the business processes of Customer or any Affiliate; and

6.1.8 as regards any Goods: (i) at the time of delivery, Supplier shall be the sole owner of the Goods and that no other person has a legal or other interest which could mean that Customer is unable to own the Goods outright; (ii) at the time of the delivery, the Goods shall be of satisfactory quality and fit for purpose and shall meet the description and standards which are either listed in this Agreement or are otherwise agreed in writing between the parties; (iii) it shall obtain and transfer for Customer's benefit, all unexpired manufacturer warranties relating to the Goods; and (iv) it shall ensure that, at all times up to and including delivery of the Goods to Customer, the Goods are protected against any unauthorised interference, whether during storage, loading, transport or otherwise.

6.2 Breach of any of the warranties set out in Clause 6.1 shall entitle Customer to terminate this Agreement immediately upon written notice without penalty or cost and any Charges paid in advance for Deliverables that have not been delivered as at the effective date of termination shall be reimbursed to Customer in accordance with Clause 12.4.

7. INDEMNITIES

7.1 Supplier shall fully indemnify and hold Customer and each member of the Customer Group harmless from and against any and all losses, damages, claims, costs and expenses (including reasonable legal expenses) suffered or incurred by or awarded against Customer and/or any member of the Customer Group as a result of or in connection with:

7.1.1 any breach by Supplier of: (i) Clause 10; (ii) Clause 11; (iii) the warranties given by Supplier in Clauses 6.1.3, 6.1.4, 6.1.5; or (iii) the warranty given by Supplier in Clause 6.1.6 (a "**Claim**");

7.1.2 any deductions of income tax and/or employee National Insurance contributions, or payment of employer National Insurance contributions and/or apprenticeship levy (together in each case with any associated interest and/or penalties), in respect of any Resource;

7.1.3 any claim made against Customer by a third party arising out of, or in connection with, the supply of the Deliverables, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of its obligations under this Agreement by Supplier, its employees, agents or suppliers; and

7.1.4 any sanction imposed on Customer by any Regulator arising as a direct result of Supplier's failure to comply with any Applicable Law in the course of providing the Deliverables.

7.2 Supplier shall also indemnify an Affected Employer (as defined in Clause 16.2) in accordance with Clause 16.2.3.

7.3 The exclusions and limitations of liability in Clause 0 shall not apply to the indemnities set out in Clauses 7.1 and 7.2.

7.4 Where and to the extent that Supplier is involved in the conduct, negotiation, settlement and/or litigation of any Claim, it shall perform that role with due regard to the interests of the Customer Group and shall not settle or make any compromise in relation to any such Claim without the prior written consent of Customer (such consent not to be unreasonably withheld or delayed).

8. LIMITATION OF LIABILITY

- 8.1 Subject to Clauses 7.3, 8.2 and 8.4, the total aggregate liability of each party to the other in respect of all causes of action arising out of or in connection with this Agreement (whether for breach of contract, strict liability, tort (including negligence), misrepresentation or otherwise) shall not exceed:
- 8.1.1 in the case of Customer, the total of all Charges which at the relevant time have been paid or are payable under this Agreement; and
- 8.1.2 in the case of Supplier, two hundred percent (200%) of the total of all Charges which at the relevant time have been paid or are payable under this Agreement.
- 8.2 Subject to Clauses 7.3 and 8.4, neither party shall be liable to the other for any indirect, consequential or special loss or damage.
- 8.3 Notwithstanding Clause 8.2, the parties acknowledge that Customer may recover as a direct loss: (i) any reasonable additional operational or administrative costs and expenses arising from Supplier's default; and (ii) any wasted expenditure or charges rendered unnecessary and/or incurred by Customer arising from Supplier's default.
- 8.4 Nothing in this Agreement shall limit or exclude: (i) Supplier's liability for wilful default; (ii) Supplier's liability under Clause 7 (Indemnities); and either party's liability for: (iii) death or personal injury resulting from negligence; (iv) fraud or fraudulent misrepresentation; or (v) other liability the exclusion or limitation of which is not permitted by Applicable Law.

9. INSURANCE

- 9.1 Supplier shall at all times during the term of this Agreement and for a period of six (6) years thereafter maintain at its own cost sufficient insurance policies with a reputable insurance company to cover potential liabilities which Supplier may have to Customer and members of Customer Group under this Agreement. On request, Supplier shall: (i) provide Customer with reasonable evidence of the maintenance of any such insurance; (ii) provide Customer with copies of all terms and conditions as may from time to time apply to any such insurance policies; and (iii) assign to Customer the benefit of any such insurance.

10. CONFIDENTIALITY

- 10.1 Each party shall keep the other's Confidential Information confidential and shall not divulge the same to any third party except for the purposes of this Agreement and shall not use such Confidential Information itself for any other purpose without the prior written consent of the other party.
- 10.2 The provisions of this Clause 10 shall not apply to any Confidential Information that the receiving party can show: (i) is in the public domain in substantially the same combination as that in which it was disclosed to the receiving party other than as a result of a breach of this Agreement or any other obligations of confidentiality; (ii) is or was lawfully received from a third party not under an obligation of confidentiality with respect thereto; (iii) is required to be disclosed under operation of law, by court order or by any Regulator; (iv) is approved for disclosure in writing; or was developed independently of and without reference to confidential information disclosed by the other party, provided that (except in the case of disclosure under (iii) above) each party shall provide the other with at least ten (10) days' written notice of its intention to rely upon one or more of these

exceptions, such notice specifying details of the exception to be relied upon and the information concerned.

- 10.3 Each party shall be entitled to divulge the other party's Confidential Information to its employees, agents, directors, officers, authorised sub-contractors, professional advisors and consultants who have a need to know the same in connection with this Agreement provided that the receiving party shall ensure that such persons are aware of and are bound by confidentiality obligations no less onerous than those imposed under the terms of this Clause 10.
- 10.4 Neither party shall make or issue any announcement or public circular relating to the subject matter of this Agreement without the prior written approval of the other.
- 10.5 Supplier shall not use the name of Customer or any other member of the Customer Group as a reference or in any advertising or promotional materials, press release, tender, proposal, article or other similar material without the prior written consent of Customer, and shall be responsible for, and shall ensure compliance with the provision of this Clause 10.5 by all its employees, agents, directors, officers, authorised sub-contractors, professional advisors and consultants.

11. DATA PROTECTION

- 11.1 If the provision of the Services will require Supplier to Process Personal Data on behalf of Customer, Supplier will do so as Customer's Processor and only in accordance with this Agreement. The categories of Data Subjects in respect of such Personal Data shall be limited to: (i) employees, directors and contractors of Customer and Customer Group; and (ii) any customers and/ or clients of Customer and Customer Group from time to time. Such Personal Data will not include, and Supplier shall not be permitted to process, any Special Category Personal Data.
- 11.2 Without prejudice to the generality of the obligation set out in Clause 11.1, Supplier warrants and acknowledges that it is a condition of this Agreement that it will:
 - 11.2.1 take appropriate technical and organisational measures to protect any such Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction of or damage to such Personal Data in accordance with the Security Requirements;
 - 11.2.2 without prejudice to the generality of Clause 11.2.1, it will not appoint any sub-contractors without Customer's prior written consent and will ensure that the contractual arrangements with its sub-contractors impose obligations on the sub-contractors equivalent to those set out in this Clause 11.2;
 - 11.2.3 notify Customer promptly of any proposed changes to the technical and organisational measures referred to in Clause 11.2.1, unless such changes are minor or inconsequential;
 - 11.2.4 on reasonable notice allow Customer to take all reasonable steps to ensure compliance with the foregoing obligations including, without limitation, to conduct its own audit of any Processing of any Personal Data and documented security procedures of Supplier, its agents or permitted sub-contractors at the appropriate premises (and Supplier will procure that its employees, agents and sub-contractors will co-operate fully with such an audit). Supplier will provide Customer on request with a copy of an audit carried out by Supplier or its employees, agents or permitted sub-contractors in respect of Supplier's documented security procedures;

- 11.2.5 within the timescales required by any Regulator, permit such Regulator to conduct its own audit of the Processing of any such Personal Data and documented security procedures;
- 11.2.6 not, and will ensure that its agents and sub-contractors will not, transfer Personal Data to any country outside the UK;
- 11.2.7 assist Customer, within such timescales as may be required by Customer with all Data Subject Requests which may be received from the Data Subjects. Should Supplier receive any such Data Subject Requests, Supplier will promptly and, in any event, within forty-eight (48) hours, inform Customer and forward the request forthwith to Customer. Supplier will not respond to any such Data Subject Requests except on instruction from Customer; and
- 11.2.8 only Process such data to the extent absolutely necessary to provide the Services in accordance with this Agreement and Customer's express instructions and in compliance with the Data Protection Legislation.
- 11.3 The provisions of Clauses 11.1 and 11.2 will be without prejudice to any obligations and duties imposed directly on Supplier under the Data Protection Legislation and Supplier hereby agrees to comply with those obligations and duties.
- 11.4 Any data, including, without limitation, any Personal Data Processed on behalf of Customer under this Agreement will remain the property of Customer, and, upon expiry or termination (howsoever effected) of this Agreement or upon demand, Supplier will forthwith and in any event, within thirty (30) days procure the return of the same and any copies thereof to Customer, or, at Customer's option, securely and permanently destroy the said Personal Data in accordance with Customer's instructions and certify to Customer that destruction has been completed.
- 11.5 Supplier shall immediately and, in any event, within twenty-four (24) hours, notify Customer if it:
 - 11.5.1 becomes aware of any actual or suspected or "near miss": (i) Personal Data Breach; or (ii) breach of the Security Requirements; or (iii) breach of the Data Protection Legislation; or (iv) breach of this Clause 11 (including, in particular, a breach of Clause 11.1, by Supplier or its agents or sub-contractors);
 - 11.5.2 is required by Applicable Law to act other than in accordance with any of Customer's instructions given under Clause 11.1, provided Supplier is not prohibited from doing so by law; or
 - 11.5.3 considers in its opinion (acting reasonably), that any of Customer's instructions under Clause 11.1 infringe any of the Data Protection Legislation.
- 11.6 Supplier shall take all reasonable steps to ensure the reliability and integrity of any Supplier personnel who have access to the Personal Data, and shall ensure that only such Supplier personnel required by it to assist it in meeting its obligations under this Agreement shall have access to such Personal Data.
- 11.7 For the purposes of this Clause 11, the terms: "**Data Subject**", "**Personal Data**", "**Personal Data Breach**", "**Processor**" and "**Processing**" shall have the meanings given to that term in the Data Protection Legislation and "**Process**" and "**Processed**" shall be construed accordingly.

12. TERMINATION

- 12.1 This Agreement shall begin on the Effective Date and shall continue until terminated by Customer upon not less than thirty (30) days' written notice.
- 12.2 Each party shall be entitled to terminate this Agreement with immediate effect by notice in writing to the other if the other commits a material breach of this Agreement as a whole and, where the breach is capable of remedy, has failed to remedy that breach within fourteen (14) days of written notice requiring remediation.
- 12.3 Each party shall be entitled to terminate this Agreement immediately upon notice in writing if the other party: (i) takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to the foregoing; or (ii) ceases or threatens to cease carrying on business;
- 12.4 If this Agreement is terminated for any reason, Supplier shall reimburse to Customer on demand any Charges paid in advance for Deliverables that have not been delivered as at the effective date of termination.

13. EXIT

- 13.1 On termination or expiry of this Agreement, Supplier shall immediately deliver to Customer all Deliverables whether or not then complete, and return all of the Customer Property. If Supplier fails to do so, then Customer may enter Supplier's premises and take possession of such Deliverables and Customer Property. Until they have been delivered or returned, Supplier shall be solely responsible for the safe keeping of all Deliverables and Customer Property in its possession and will not use them for any purpose not connected with this Agreement.
- 13.2 Supplier shall, if so requested by Customer, provide all assistance reasonably required by Customer to facilitate the smooth transition of the provision of the Deliverables to Customer or any Customer nominated replacement supplier.

14. AUDIT

- 14.1 Supplier shall allow Customer (or its professional advisers) to access Supplier's premises, personnel, systems and records to in order to: (i) assess compliance by Supplier with its obligations under this Agreement; and (ii) verify that the Charges and any other sums charged to Customer under this Agreement are accurate.
- 14.2 Customer shall provide at least five (5) Business Days' notice of its intention to conduct an audit and any audit shall be conducted during Business Hours.

15. INTELLECTUAL PROPERTY

- 15.1 Save as provided in Clause 15.2, all right, title and interest (including all Intellectual Property) in and to the Deliverables shall be the exclusive property of and shall vest in Customer upon creation and Supplier hereby assigns and agrees to assign by way of a present assignment of future rights, with full title guarantee, to Customer all right, title and interest in connection with the same without further consideration. Supplier shall not be entitled to use the whole or any part of the Deliverables except as permitted by this Agreement.

- 15.2 All right, title and interest (including all Intellectual Property) in the Background Elements shall be the exclusive property of Supplier. Customer shall not be entitled to use the whole or any part of the Background Elements except as permitted by this Agreement. Supplier hereby grants Customer a non-exclusive, world-wide, royalty free, irrevocable, perpetual and fully transferable licence (including rights to sub-licence) for Customer to use the Background Elements where and to the extent necessary to allow Customer, members of the Customer Group and any relevant customers thereof, to benefit from the Services and use the Deliverables.
- 15.3 Supplier shall, at the request of Customer, sign and execute and shall procure the signature and execution of all assignments, instruments and other documents, and shall do and shall procure the doing of all acts (including the waiver of moral rights in copyright), as may be necessary or desirable to give effect to Clause 15.1 and/or assist Customer and/or its nominee to protect, maintain and enforce the rights acquired by Customer pursuant to Clause 15.1.
- 15.4 All Customer Property shall be and shall remain the exclusive property of Customer, the relevant member of the Customer Group and/or the relevant licensor and Supplier shall acquire no right, title or interest in or to the same. Customer hereby grants a licence to Supplier to use such Customer Property solely for the purpose of providing the Deliverables.

16. TUPE & PAYROLL COMPLIANCE

- 16.1 The parties do not consider or intend that the contract of employment of any person (or any liability in connection therewith) will transfer to Customer, the Customer Group or any New Supplier as a result of any arrangements contemplated by this Agreement in accordance with TUPE and accordingly no person will transfer to Customer, the Customer Group or to any New Supplier as a result of the arrangements contemplated by this Agreement.
- 16.2 If the contract of employment of any person (or any liability in connection therewith) transfers or is alleged to have transferred (an “**Affected Employee**”) to Customer, a member of the Customer Group or to a New Supplier (an “**Affected Employer**”) by virtue of TUPE as a result of any of the arrangements contemplated by this Agreement (including as a result of the termination of this Agreement in whole or in part), the following provisions shall apply:
- 16.2.1 the Affected Employer or Supplier (as applicable) will notify the other as soon as reasonably practicable after becoming aware that an Affected Employee is likely to transfer, has transferred or alleges to have transferred to the Affected Employer;
- 16.2.2 the Affected Employer may terminate the employment of any Affected Employee in writing within twenty (20) business days of becoming aware of such transfer or alleged transfer; and
- 16.2.3 provided the Affected Employer complies with Clause 16.2.1 (where such person remains employed or engaged) and Clause 16.2.2 Supplier shall indemnify the Affected Employer and keep the Affected Employer indemnified and hold it harmless at all times from and against all actions, costs (including legal expenses), claims liabilities, expenses, legal remedies, compensation, court or tribunal orders, penalties, fines, awards and all other liabilities of any nature in any way connected with or arising from or relating to any claim or threatened claim which the Affected Employer may suffer or incur and which arises in connection with, or relates to the employment of such a person and/or the termination of their employment and/or any failure to inform and consult as required by TUPE.

- 16.3 Without prejudice to the provisions of Clauses 16.1 and 16.2, within fourteen (14) days of a request from Customer to Supplier, Supplier shall provide such information in relation to any person providing services under this Agreement as Customer shall reasonably request. Supplier shall permit Customer to disclose the information to Customer Group Companies and/or any New Supplier or any prospective New Supplier.
- 16.4 The parties acknowledge that it is the policy of Customer to only engage Resource where payments in respect of such Resource are fully taxable through PAYE. Accordingly, Supplier warrants that the Services will only be supplied by Resource where payment made to or in respect of Resource is fully taxable (and subjected to tax and National Insurance deductions under PAYE): (a) as earnings from the Resource's employment with Supplier or a subcontractor previously approved in writing by Customer; or (b) as earnings from the Resource's employment with an Intermediary (provided that such Intermediary is at all relevant times, accredited by the Freelancer & Contractor Services Association (the FCSA)); or (c) under Part 2, Chapter 7 of ITEPA (workers individually engaged by agency). This shall apply whether the payment is made by Supplier, by a Supplier subcontractor or by an Intermediary.

17. SUB-CONTRACTING & ASSIGNMENT

- 17.1 Supplier shall not sub-contract (or purport to sub-contract) any of its obligations or liabilities under this Agreement without the prior written consent of Customer.
- 17.2 Supplier shall ensure that any contract between it and each sub-contractor contains provisions which are the same as or which are materially similar to the provisions contained in this Agreement. Supplier acknowledges that any consent given by Customer under Clause 17.1 shall not relieve Supplier of any of its obligations or liabilities under this Agreement.
- 17.3 Supplier shall not assign, mortgage, charge, declare a trust over, transfer or deal in any other way with this Agreement or any of its rights under such documents (or purport to do any of the foregoing) without Customer's prior written consent (acting in its absolute discretion).
- 17.4 Customer shall be entitled at any time to assign, mortgage, charge, declare a trust over, transfer or deal in any other way with its rights under this Agreement to any third party without the prior consent of Supplier.

18. THIRD PARTY RIGHTS

- 18.1 Customer may perform any of its obligations or exercise any of its rights under this Agreement by itself or through any of its Affiliates solely for the business purposes of Customer Group, provided that any act or omission of any Affiliate shall be deemed to be the act or omission of Customer. If Customer is unable to secure the relief it and/or its other Affiliates seek following a first instance decision of the English courts on the basis that the courts consider that Customer is not an interested party to such claim or other civil proceedings or that it has not suffered any loss or the same loss, then the relevant Affiliate shall be entitled to bring such claim or other civil proceedings against Supplier directly.
- 18.2 Supplier acknowledges and accepts that any right or remedy it may have under this Agreement rests solely with Customer and enters into this Agreement on that basis.
- 18.3 Except as provided in Clause 18.1, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act. Notwithstanding the above, a New Supplier shall be entitled to enforce the provisions of paragraph 2 of Clause 16.2.

19. GENERAL

- 19.1 This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, each of which so executed shall be an original, but all the counterparts shall together constitute one and the same Agreement.
- 19.2 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 19.3 Any notice required or permitted to be given by either party to the other under this Agreement must be in writing and addressed to that other party at its registered office or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Notices may be given, and are deemed received (i) by hand on receipt of a signature at the time of delivery; and (ii) by Royal Mail Recorded Signed For post at 9.00 am on the second Business Day after posting.
- 19.4 If any provision of this Agreement (or part of any such provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.
- 19.5 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy. No single or partial exercise of any right, power or remedy provided by law or under this Agreement by either party shall prevent any future exercise of it or the exercise of any other right, power or remedy by that party.
- 19.6 Each party shall at the request of the other party, and at its own cost, do all acts and execute all documents which are necessary to give full effect to this Agreement.
- 19.7 The relationship of Supplier to Customer shall be that of independent contractor and nothing contained in this Agreement shall create a relationship of employer and employee, principal and agent or partnership between Customer and Supplier.
- 19.8 Subject to Clause 19.9, the parties agree that this Agreement constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter. Any terms and conditions incorporated within any Purchase Order issued in relation to this Agreement will similarly have no legal effect.
- 19.9 Notwithstanding Clause 19.8, if any Purchase Order is issued for the provision of any Deliverables in respect of which the parties have, prior to the issue of the relevant Purchase Order, entered into a separate written agreement, the parties agree that the such Purchase Order shall be subject to the terms of that written agreement and that the terms of this Purchase Order shall not apply. If the parties have not entered into a separate written agreement, then this Agreement shall apply.
- 19.10 In the event of conflict between the elements of this Agreement or the terms making up any given Purchase Order, the following order of precedence shall apply (highest first): (i) any terms set out in a Purchase Order which are unambiguously and expressly stated to vary the terms of this Agreement (but then only to the extent of such variation and in relation to that Purchase Order); (ii) any term contained within a Clause to this Agreement; and (iii) the other parts of any relevant Purchase Order.
- 19.11 This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.