



Exigia Ltd. Standard Terms and Conditions

Background

Exigia Ltd (the “Provider”) provides its business clients (“Purchasers”) with a range of services including information governance and data security consultancy, training, email, data management, web development, website hosting, and website management. The Provider has reasonable skill, knowledge, and experience in these fields. The Provider has reasonable skill, knowledge, and experience in these fields.

These Terms and Conditions shall form the basis of contracts for the provision of Services by the Provider to its Purchasers unless the Parties enter into separate contracts.

AGREED TERMS

1. Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Applicable Laws”	means all laws, statutes, regulations, and similar instruments from time to time in force applicable to the Parties, the Services, and to the Contract;
“Business Day”	means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in England;
“Business Hours”	means 9.00 a.m. to 5.00 p.m. on a Business Day;
“Charges”	means any and all sums due under the Contract from the Purchaser to the Provider in consideration of the Services, as set out in Clause 5 (Fees, Payment, and Records);
“Commencement Date”	means the date on which the Contract shall enter into effect, as set out in Clause 2 (Basis of Contract);
“Confidential Information”	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Contract (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
“Consumer Price Index”	means, subject to sub-Clause 5.7, the Consumer Prices Index published by the Office for National Statistics

“Contract”	means the contract entered into by the Provider and the Purchaser for the provision of Services in accordance with and on the basis of these Terms and Conditions;
“Data Protection Legislation”	means all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy including, but not limited to, the UK GDPR (as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 as amended;
“FOIA”	means the Freedom of Information Act 2000, and any subordinate legislation made under the Freedom of Information Act 2000 from time to time. Together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
“Indexed Amount”	means the sum calculated in accordance with Clause 5.7;
“Index Figure”	means the annual figure given by the Consumer Prices Index;
“Intellectual Property Rights”	means patents, rights to inventions, copyright and related rights, trademarks, service marks, business names, domain names, rights in get-up and trade dress, goodwill and the right to passing off actions, design rights, database rights, rights subsisting in software, rights to use confidential information and the right to protect the same, and any and all other intellectual property rights, whether registered or unregistered, including applications and the right to apply for (and be granted) renewals or extensions of, and rights to claim priority from, any such rights and any and all equivalent rights or other forms of protection subsisting now or in the future anywhere in the world;
“Mandatory Policies”	means the Purchaser’s business policies;
“MSA Offence”	means an offence under the Modern Slavery Act 2015.
“Order”	means the Purchaser’s order for the Services as set out in the Purchaser’s purchase order form or in the Purchaser’s written acceptance of the Provider’s quotation or the Purchaser’s order placed by completion of an order or order form by email or on or via the Provider’s website;

“Provider”	means the Party providing the Services to the Purchaser under the Contract;
“Provider Equipment”	means any and all equipment including computer hardware, systems, and software, provided and used by the Provider in relation to the provision of the Services (whether directly or indirectly);
“Provider Materials”	means any and all information, documents, and other materials provided by the Provider to the Purchaser in relation to the provision of the Services;
“Purchaser”	means the Party procuring the Services from the Provider under the Contract;
“Purchaser Equipment”	means any and all equipment including computer hardware, systems and software, provided or otherwise made accessible by the Purchaser to the Provider in relation to the provision of the Services (whether directly or indirectly);
“Purchaser Materials”	means any and all information, documents, and other materials provided by the Purchaser to the Provider in relation to the provision of the Services;
“Services”	means the services provided or to be provided by the Provider to the Purchaser in accordance with the Contract, as fully defined in the Specification or specified on the Provider’s Order;
“Specification”	means the full description and specification of the Services as agreed in writing by the Purchaser and the Provider or the full description and specification of the Services published on the Provider’s website;

- 1.2 Any reference to “writing”, and any similar expression, includes a reference to any communication sent by email, SMS text, or other form of electronic communication.
- 1.3 Unless expressly stated otherwise, legislation or a provision thereof is a reference to that legislation or provision as amended or re-enacted from time to time.
- 1.4 Unless expressly stated otherwise, legislation or a provision thereof, shall include all subordinate legislation made from time to time under that legislation or provision.
- 1.5 A reference to “these Terms and Conditions” is a reference to these Terms and Conditions as amended or supplemented at the relevant time.
- 1.6 A reference to “the Contract” is a reference to the contract between the Parties as defined above in sub-Clause 1.1 and further set out below in Clause 2 (Basis of Contract).
- 1.7 A reference to a "Party" or the "Parties" refer to the parties to the Contract.
- 1.8 A reference to any other agreement or document is a reference to that agreement or document as amended or supplemented at the relevant time.

- 1.9 Any obligation on either Party not to do a particular thing includes an obligation to not allow that thing to be done.
- 1.10 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of the Contract.
- 1.11 Words communicating the singular number shall include the plural and vice versa.
- 1.12 References to any gender shall include any other gender.
- 1.13 References to persons shall include natural persons, corporate, or unincorporated bodies (whether or not the same have a separate legal personality).
- 1.14 References to a company shall include companies, corporations, or other bodies corporate, however so and wherever incorporated or established.

2. Basis of Contract

- 2.1 An Order shall constitute a contractual offer by the Purchaser to procure Services from the Provider in accordance with and on the basis of these Terms and Conditions.
- 2.2 An Order shall be deemed to be accepted by the Provider upon the Provider's issuing its acceptance of that Order in writing.
- 2.3 Upon the Provider's issuing of written acceptance under sub-Clause 2.2, a Contract shall come into existence between the Purchaser and the Provider. The date of the Provider's written acceptance shall be the Commencement Date of the Contract.
- 2.4 These Terms and Conditions shall form the basis of the Contract. Subject to Clause 18 (Variation) and to sub-Clause 10.8 (Data Processing), any other terms that the Purchaser or the Provider seek to impose or incorporate into the Contract, or which are implied by trade custom, practice, or course of dealing shall be excluded from the Contract.
- 2.5 No advertising, promotional literature, descriptive matter, drawings, samples, catalogues, brochures, or similar material issued or published by the Provider in any format or medium shall form part of the Contract or have any contractual force. Such material is provided by the Provider only for promotional purposes and for providing an approximate description of the services available from the Provider.
- 2.6 Quotations issued by the Provider shall not constitute a contractual offer capable of acceptance. Quotations are valid for a period of 30 Business Days only from the date of issue unless otherwise stipulated as part of the quotation.

3. Provision of the Services and Provider's Obligations

- 3.1 With effect from the Commencement Date or the date stated in the Order, the Provider shall, throughout the term of the Contract, provide the Services to the Purchaser.
- 3.2 The Provider shall ensure that the Services conform at all times with the Specification in all material respects.
- 3.3 The Provider shall provide the Services with reasonable skill and care,

commensurate with prevailing standards in the in the United Kingdom.

- 3.4 The Provider shall use reasonable endeavours to meet any performance dates set out in the Order or as the Purchaser may notify to the Provider from time to time. Such dates shall be estimates only, however, and time shall not be of the essence in the provision of the Services.
- 3.5 The Provider shall act in accordance with all reasonable instructions issued by the Purchaser provided that such instructions are compatible with the Specification.
- 3.6 The Provider shall ensure that any and all of its personnel involved in the provision of the Services are suitably skilled, qualified, and experienced to perform the part(s) of the Services to which they are assigned.
- 3.7 The Provider shall provide the Provider Equipment.
- 3.8 In the event that any licences or consents are required to enable the Provider to provide the Services and to install and use any required Provider Equipment, the Provider shall obtain the same before the date on which the provision of the Services is due to begin (in accordance with sub-Clause 3.1), and shall maintain the same to the extent required for the provision of the Services and use of the Provider Equipment throughout the term of the Contract.
- 3.9 The Provider shall use any Purchaser Materials provided by the Purchaser from time to time only to the extent reasonably necessary for and only for the purposes of the provision of the Services and only in accordance with the Purchaser's written authorisation and instructions. The Provider shall hold any and all Purchaser Materials in safe custody, at its own risk, and shall maintain the same in good condition. The Provider shall return or dispose of Purchaser Materials in its possession at the Purchaser's option and on the Purchaser's written instruction.
- 3.10 The Provider shall use any Purchaser Equipment provided (or made available) by the Purchaser from time to time only to the extent reasonably necessary for and only for the purposes of the provision of the Services and only in accordance with the Purchaser's written authorisation and instructions. The Provider shall use all such Purchaser Equipment with care and in accordance with best practice at all times. The Provider shall return Purchaser Equipment in its possession on the Purchaser's written instruction.
- 3.11 In the event that the Purchaser provides access to the Purchaser's premises and any other facilities that is or are agreed upon by the Parties or as otherwise reasonably required from time to time by the Provider to enable the Provider to provide the Services, the Provider shall use the same only to the extent reasonably necessary for and only for the purposes of the provision of the Services and only in accordance with any written authorisation and instructions and (as further stated in sub-Clause 8.1.(c)) all applicable health and safety rules and regulations and security requirements in place at the Purchaser's premises and such other facilities.

4. Purchaser's Obligations

- 4.1 The Purchaser shall ensure that all information that it provides in the Order and any Specification shall be complete and accurate.
- 4.2 The Purchaser shall provide:

- a) all co-operation that is reasonably required by the Provider to enable the Provider to provide the Services;
 - b) any and all Purchaser Materials that are agreed upon by the Parties or as otherwise reasonably required from time to time by the Provider together with any necessary written authorisation and instructions relating to the Purchaser Materials, to enable the Provider to provide the Services;
 - c) or make available any and all Purchaser Equipment (or access thereto) that is agreed upon by the Parties or as otherwise reasonably required from time to time by the Provider together with any necessary written authorisation and instructions relating to the Purchaser Equipment, to enable the Provider to provide the Services;
 - d) where required, access to and availability and use of the Purchaser's premises and any other facilities that is or are agreed upon by the Parties or as otherwise reasonably requested from time to time by the Provider to enable the Provider to provide the Services and shall inform the Provider of any applicable health and safety rules and regulations and security requirements.
- 4.3 The Purchaser may from time-to-time issue reasonable instructions to the Provider in relation to the Provider's provision of the Services. Any such instructions shall be compatible with the Specification.
- 4.4 In the event that the Provider requires the decision, approval, consent, authorisation, or any other communication from the Purchaser in order to continue with the provision of the Services (or any part thereof) at any time, the Purchaser shall provide the same in a reasonable and timely manner.
- 4.5 In the event that any licences or consents are required to enable the Provider to provide the Services and to install and use any required Provider Equipment, the Purchaser shall obtain the same before the date on which the provision of the Services is due to begin (in accordance with sub-Clause 3.1), and shall maintain the same to the extent required for the provision of the Services and use of the Provider Equipment throughout the term of the Contract.
- 4.6 Any failure or delay in the provision of the Services by the Provider which results from the Purchaser's failure or delay in complying with any of its obligations under the Contract or any other act or omission of the Purchaser shall not be the responsibility or fault of the Provider.

5. Charges, Payment, and Records

- 5.1 In consideration of the provision of the Services by the Provider, the Purchaser shall pay the Charges as set out in the Order, which shall specify whether they shall be on a time and materials basis, a fixed price, or a combination of both.
- 5.2 The Charges shall be the full and only consideration payable to the Provider with respect to its provision of the Services.
- 5.3 Unless the Parties agree otherwise in writing, the Charges shall include all costs and expenses incurred by the Provider, whether directly or indirectly, in connection with the provision of the Services.
- 5.4 Clause 5.5 shall apply where the Provider provides Services on a time and materials basis and clause 5.6 shall apply where the Provider provides Services

on a fixed price basis. The remainder of this clause 5 shall apply in either case.

- 5.5 Where the Services are provided a time and materials basis:
- a) The Charges shall be calculated in accordance with the Provider's daily rates as communicated to the Purchaser current at the date of the Contract;
 - b) the Provider's daily rates for each Purchase are calculated on the basis of a seven-hour working day during Business Hours on Business Days;
 - c) the Provider shall have the right to charge the Purchaser for any reasonable expenses incurred by the personnel that it engages in the provision of the Services including, but not limited to, travel expenses, accommodation expenses, subsistence, and any other associated expenses, and for the cost of any services procured from third parties by the Provider necessary for the performance of the Services, and for the cost of any materials required.
- 5.6 Where Services are provided on a fixed price basis, the total price for the Services shall be the set out in the Order.
- 5.7 Indexation will be applied to the Provider's daily rates and Charges under this contract as follows:
- a) if at any time, the Consumer Prices Index ceases to be published, or ceases to be published in the form in which it is published at the date of this Agreement, there shall be substituted for that Index such other index as is agreed between the Parties most closely to represent the same constituent elements, and the definition of the Consumer Prices Index" shall be construed accordingly;
 - b) the Indexed Amount shall be the Charges subject to review in accordance with this Clause 5;
 - c) the Provider's daily rates, Charges and Indexed Amount shall be reviewed at the expiration of the initial contract term and annually thereafter if the contract is renewed. If upon any such review, the Index Figure last published before that date shows an increase in relation to the Index Figure last published twelve months before that last published date the Indexed Amount shall for that year be increased in the same proportion.
- 5.8 Unless the Parties agree otherwise, the Provider shall invoice the Purchaser upon the completion of the Services or monthly in arrears where the service provided by the Provider covers or is expected to cover a period of more than one calendar month.
- 5.9 All payments required to be made pursuant to the Contract in consideration of the Services shall be made within 30 Business Days of receipt of the relevant invoice by the Purchaser.
- 5.10 All payments required to be made pursuant to the Contract in consideration of the Services shall be made in Pounds Sterling in cleared funds to such bank as the Provider may nominate in writing.
- 5.11 Where any payment is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.
- 5.12 All sums payable by the Purchaser under the Contract shall be exclusive of VAT. In the event that any taxable supply for VAT purposes is made under the

Contract by the Provider to the Purchaser, the Purchaser shall, upon receipt of a valid VAT invoice from the Provider, pay to the Provider such additional sums in respect of VAT as are chargeable on the supply of the Services at the same time that payment is due for the provision of the Services.

- 5.13 If the Purchaser receives an invoice and reasonably believes that it is incorrect, it may dispute that invoice in good faith as follows:
- a) the Purchaser shall notify the Provider in writing as soon as reasonably possible and practicable;
 - b) the Purchaser shall not be deemed to be in breach of the Contract for failure to pay the disputed sums while such a dispute is ongoing;
 - c) the Purchaser shall pay any sum which is not in dispute by the due date for payment;
 - d) following the resolution of the dispute, the Purchaser shall pay the sum agreed between the Parties including any interest charged on that sum by the Provider, as calculated in accordance with sub-Clause 5.8 (from the original due date for payment);
 - e) in the event that the Provider is required to refund any sums to the Purchaser, interest shall be added to such sums, as calculated in accordance with sub-Clause 5.8; and
 - f) following the resolution of the dispute, in the event that either Party is required to make a balancing payment, that Party shall make such payment within 30 days and, in the event that the Provider is required to issue a credit note, it shall issue the same within 30 days.
- 5.14 Without prejudice to sub-Clause 14.2(a) (termination for late payment), any sums which remain unpaid by the due date for payment under the Contract shall incur interest on a daily basis at a rate of 8.0% per annum above the base rate of the Bank of England from time to time, or at 8.0% per annum for any period during which that base rate is below 0%, from the due date for payment until payment is made in full of any such outstanding sums, whether before or after judgment.
- 5.15 All sums due under the Contract shall be paid in full without any set-off, withholding, deduction, or counterclaim except any withholding or deduction (if any) of tax that is required by law.
- 5.16 The Provider shall:
- a) keep or procure that are kept, such records and books of account as are necessary to enable the amount of any sums payable pursuant to the Contract to be accurately calculated; and
 - b) at the reasonable request of the Purchaser, allow the Purchaser or its agent to inspect those records and books of account.

6. Intellectual Property Rights

- 6.1 The Purchaser (and, where applicable, its licensors) shall retain ownership of the Intellectual Property Rights subsisting in any and all Purchaser Materials.
- 6.2 The Purchaser shall grant to the Provider a non-exclusive, fully paid-up, royalty-free, non-transferrable, non-sublicensable licence to use, copy, and modify the Purchaser Materials for the term of the Contract only to the extent reasonably

necessary for and only for the purposes of the provision of the Services and only in accordance with the Purchaser's written authorisation and instructions.

- 6.3 The Provider (and, where applicable, its licensors) shall retain ownership of the Intellectual Property Rights subsisting in any and all Provider Materials including documents created for the Purchaser as part of the Services.
- 6.4 The Provider shall grant to the Purchaser a non-exclusive, fully paid-up, royalty-free, non-transferrable, non-sublicensable licence to use, copy, and modify the Provider Materials for the term of the Contract only to the extent reasonably necessary for and only for the purposes of the provision of the Services and only in accordance with the Provider's written authorisation and instructions.
- 6.5 The Provider shall grant to the Purchaser a non-exclusive, fully paid-up, royalty-free, non-transferrable, non-sublicensable licence to use, copy, and modify documents created for the Purchaser as part of the Services in perpetuity only to the extent reasonably necessary for and only for the purposes of the provision of the Services and only in accordance with the Provider's written authorisation and instructions.

7. Confidentiality

- 7.1 Each Party undertakes that, except as provided by sub-Clause 7.2 or as authorised in writing by the other Party (such authorisation not to be unreasonably withheld), it shall, at all times during the term of the Contract and for twelve months after its termination or expiry:
 - a) keep confidential all Confidential Information;
 - b) not disclose any Confidential Information to any other Party;
 - c) not use any Confidential Information for any purpose other than as contemplated by the Contract; and
 - d) ensure that (as applicable) none of its employees, directors, officers, agents, or sub-contractors does any act which, if done by that Party, would be a breach of the provisions of this Clause 7.
- 7.2 Subject to sub-Clause 7.3, either Party may disclose any Confidential Information to:
 - a) any sub-contractors, substitutes, or suppliers;
 - b) any governmental or other authority or regulatory body;
 - c) any employee or officer of that Party or of any of the aforementioned persons, Parties, or bodies.
- 7.3 Disclosure under sub-Clause 7.2 may be made only to the extent that it is necessary for the purposes contemplated by the Contract, or as required by law. In each case, the disclosing Party must first inform the recipient that the Confidential Information is confidential. Unless the recipient is a body described in sub-Clause 7.2(b) or is an authorised employee or officer of such a body, the Party disclosing the Confidential Information under sub-Clause 7.2 must obtain and submit to the other Party a written undertaking from the recipient to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.
- 7.4 Either Party may use any Confidential for any purpose, or disclose it to any other Party, where that Confidential Information is or becomes public knowledge

through no fault of that Party.

- 7.5 When using or disclosing Confidential Information under sub-Clause 7.4, the Party using or disclosing that Confidential Information must ensure that it does not use or disclose any part of that Confidential Information which is not public knowledge.
- 7.6 The provisions of this Clause 7 shall continue in force in accordance with their terms, notwithstanding the termination or expiry of the Contract for any reason.

8. Law and Policies

- 8.1 The Provider shall, at all times, and at its own expense when performing its obligations under the Contract:
- a) comply with the Applicable Laws; and
 - b) comply with the Mandatory Policies; and
 - c) comply with all applicable health and safety rules and regulations and security requirements in place at the Purchaser's premises and any other facilities to which the Provider has access that is or are agreed upon by the Parties or as otherwise reasonably required from time to time by the Provider.
- 8.2 Each Party shall inform the other Party as soon as reasonably possible and practicable when it becomes aware of any changes to the Applicable Laws.
- 8.3 The Purchaser shall give at least 30 days written notice to the Provider of any change to the Mandatory Policies.

9. Data Protection

The Provider shall only use the Purchaser's personal data as set out in the Provider's Privacy Notice available from the Provider's website.

10. Data Processing

In this Clause 10, the terms "personal data", "processing", "data subject", "controller", "processor", and "personal data breach" shall have the meanings defined in Article 4 of the UK GDPR, and the terms "Data Processor" and "Data Controller" shall have the same meanings as "processor" and "controller" respectively. The term "domestic law" means the law of the United Kingdom or a part thereof.

- 10.1 The Parties shall both comply with all applicable data protection requirements set out in the Data Protection Legislation. This Clause 10 shall not relieve either Party of any obligations set out in the Data Protection Legislation and does not remove or replace any of those obligations.
- 10.2 For the purposes of the Data Protection Legislation and for this Clause 10, the Purchaser shall be the "Data Controller", and the Provider shall be the "Data Processor".
- 10.3 The scope, nature, and purpose of the processing; the duration of the processing; the type(s) of personal data; and the category or categories of data subject shall be set out in the Order or the Specification or any other form of instruction given to the Provider by the Purchaser.

- 10.4 The Data Controller shall (without prejudice to the generality of sub-Clause 10.2) ensure that it has in place all necessary consents and notices required to enable the lawful transfer of personal data to and/or the lawful collection of personal data by the Data Processor for the purposes described in the Order or the Specification or any other form of instruction given to the Provider by the Purchaser for the duration of the Contract.
- 10.5 The Data Processor shall (without prejudice to the generality of sub-Clause 10.2), with respect to any personal data processed by it in relation to its performance of any of its obligations under the Contract:
- a) process the personal data only on the written documented instructions of the Data Controller unless the Data Processor is otherwise required to process such personal data by domestic law. The Data Processor shall promptly notify the Data Controller before carrying out such processing unless it is prohibited from doing so by that law;
 - b) ensure that it has in place appropriate technical and organisational measures (as approved by the Data Controller) to protect the personal data from unauthorised or unlawful processing, accidental loss, damage, or destruction. Such measures shall be appropriate and proportionate to the potential harm resulting from such events and to the nature, scope, and context of the personal data and processing involved, taking into account the current state of the art in technology and the cost of implementing those measures.
 - c) ensure that any and all persons with access to the personal data (whether for processing purposes or otherwise) are contractually obliged to keep that personal data confidential;
 - d) not transfer any personal data outside of the UK without the prior written consent of the Data Controller and only if the following conditions are satisfied:
 - I. the Data Controller and/or the Data Processor has/have provided appropriate safeguards for the transfer of personal data;
 - II. affected data subjects have enforceable rights and effective legal remedies;
 - III. the Data Processor complies with its obligations under the Data Protection Legislation, providing an adequate level of protection to any and all personal data so transferred; and
 - IV. the Data Processor complies with all reasonable instructions given in advance by the Data Controller with respect to the processing of the personal data;
 - e) assist the Data Controller, at the Data Controller's cost, in responding to any and all requests from data subjects and in ensuring its compliance with the Data Protection Legislation with respect to impact assessments, security, breach notifications, and consultations with supervisory authorities or other applicable regulatory authorities (including, but not limited to, the Information Commissioner's Office);
 - f) notify the Data Controller without undue delay of any personal data breach of which it becomes aware;

- g) on the Data Controller's written instruction, delete (or otherwise dispose of) or return all personal data and any and all copies thereof to the Data Controller on termination or expiry of the Contract unless it is required to retain any of the personal data by domestic law; and
 - h) maintain complete and accurate records of all processing activities and technical and organisational measures implemented necessary to demonstrate compliance with this Clause 10 and to allow for audits, including inspections, by the Data Controller and/or any Party designated by the Data Controller. The Data Processor shall inform the Data Controller immediately if, in its opinion, any instruction infringes the Data Protection Legislation.
- 10.6 The Data Processor shall not sub-contract any of its obligations with respect to the processing of personal data under this Clause 10 to another processor without the prior written consent of the Data Controller (such consent not to be unreasonably withheld). In the event that the Data Processor appoints another processor, the Data Processor shall:
- a) enter into a written contract with the other processor, which shall impose upon that other processor substantially the same obligations as are imposed upon the Data Processor by this Clause 10, which the Data Processor shall ensure shall reflect the requirements of the Data Protection Legislation at all times;
 - b) ensure that the other processor complies fully with its obligations under that agreement and the Data Protection Legislation; and
 - c) remain fully liable to the Data Controller for the performance of that other processor's obligations and the acts or omissions thereof.

11. Insurance

The Provider shall, for the term of the Contract

- 11.1 take out and maintain professional indemnity and public liability insurance with a reputable insurance company to cover the liabilities that may arise under or in connection with the Contract and
- 11.2 at the Purchaser's request, supply the Purchaser with copies of current certificates of insurance for the term of the Contract.

12. Liability

- 12.1 Nothing in the Contract shall limit or exclude either Party's liability under or in relation to the Contract for death or personal injury caused by negligence, for fraud or fraudulent misrepresentation, for the wilful misconduct of either Party or that of its employees or agents, for any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (relating to title and quiet possession), or any other form of liability which cannot be limited or excluded by law.
- 12.2 Nothing in this Clause 12 shall exclude or limit either Party's payment obligations under the Contract.
- 12.3 Neither Party shall have the right to benefit from any of the exclusions or limitations of liability set out in this Clause 12 in respect of any liability under or in relation to the Contract which arises out of the deliberate default of either that Party or of that Party's employees or agents.

- 12.4 Nothing in this Clause 12 shall exclude claims under or in relation to the Contract for direct financial loss that are not expressly excluded by categories (a) to (i) of sub-Clause 12.6.
- 12.5 Subject to sub-Clauses 12.1 to 12.5 and to any other provision to the contrary in the Contract, neither Party shall be liable under or in relation to the Contract for any loss suffered by the other, whether suffered directly or indirectly, or whether immediate or consequential, arising in contract, tort (including negligence), breach of statutory duty, or otherwise, which falls within any of the following categories:
- a) loss of profits;
 - b) loss of sales or business;
 - c) loss of business opportunity;
 - d) loss of agreements or contracts;
 - e) loss of anticipated savings;
 - f) loss or corruption of data;
 - g) loss of, or damage to, goodwill;
 - h) indirect or consequential loss; or
 - i) special damages, even in the event that the relevant Party was aware of the circumstances in which the same could arise.
- 12.6 Subject to sub-Clauses 12.1, 12.2, 12.3, 12.4, and 12.5, the total aggregate liability of the Provider under or in relation to the Contract for any and all related or unrelated acts or omissions, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to £100,000.
- 12.7 Subject to sub-Clause 12.1, 12.2, 12.4, and 12.5, the total aggregate liability of the Purchaser under or in relation to the Contract for all related or unrelated acts or omissions, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to £100,000.
- 12.8 The limit on the Provider's liability referred to in sub-Clause 12.7 shall not be reduced by any sums awarded by any court or arbitrator using their statutory or procedural powers in relation to the costs of proceedings or interest for late payment.
- 12.9 Notwithstanding sub-Clause 12.6, but subject to sub-Clause 12.7, the Provider shall also assume responsibility for the following losses which shall be recoverable by the Purchaser:
- a) sums paid by the Purchaser to the Provider under the Contract in respect of any part of the Services which is or are not provided in accordance with the terms of the Contract;
 - b) wasted expenditure;
 - c) additional costs incurred by the Purchaser in procuring and implementing replacement or alternative services including, but not limited to, costs of management and personnel time, consultancy costs, materials costs, and equipment costs; and
 - d) losses incurred by the Purchaser which arise out of or in connection with any claim, demand, penalty, fine, action, investigation, or other

proceeding by any third party against the Purchaser resulting from any act or omission of the Provider.

- 12.10 Subject to the above provisions of this Clause 12, the Purchaser's rights under the Contract shall be in addition to, and not exclusive of, any common law rights or remedies.

13. **Force Majeure**

- 13.1 For the purposes of the Contract, "Force Majeure Event" means, in relation to either Party, any circumstances beyond that Party's reasonable control including, but not limited to, any strike, lockout, or other form of industrial action; shortage of components or raw materials; lack of, interruption to, or failure of any utility service, or lack of available facilities; non-performance by suppliers or sub-contractors; collapse of buildings, fire, explosion, accident, acts of God, storm, flood, drought, earthquake, epidemic, pandemic, or other natural disaster; terrorist attack, civil commotion or riots, war, civil war, threat of preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off diplomatic relations; nuclear, chemical, or biological contamination, or sonic boom; or any law or action taken by a government or public authority including, but not limited to, imposing an export or import restriction, quota, or prohibition, or failing to grant a necessary licence or consent, or any similar or dissimilar circumstances.
- 13.2 If any Force Majeure Event occurs in relation to either Party which affects or may affect that Party's performance of its obligations under the Contract, the affected Party shall notify the other Party as soon as reasonably possible and practicable of the nature and extent of the circumstances in question. The affected Party shall use reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 13.3 Subject to compliance with sub-Clause 13.2, neither Party shall be deemed to be in breach of the Contract or shall otherwise be liable to the other by reason of any delay in performance or non-performance of any of its obligations under the Contract to the extent that performance of that obligation is prevented, hindered, or delayed by a Force Majeure Event of which it has notified the other Party, and the time for that performance shall be extended accordingly.
- 13.4 If the performance by either Party of any of its obligations under the Contract is prevented, hindered, or delayed by a Force Majeure Event for a continuous period in excess of 30 days, the Parties shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.

14. **Termination**

- 14.1 Without prejudice to any other right or remedy available to it, either Party may terminate the Contract by giving the other Party 30 days written notice.
- 14.2 Without prejudice to any other right or remedy available to it, either Party may terminate the Contract immediately by giving written notice to the other Party in the event that:
- a) the other Party does not pay any sum due under the Contract when it is due to be paid and such sum remains outstanding for at least 7 Business Days after receiving written notification to pay that sum;

- b) the other Party commits a material breach of any term of the Contract and (if that breach is capable of remedy) does not remedy that breach within 30 days after receiving written notification to do so;
- c) the other Party threatens to, or does, suspend, payment of its debts as they fall due, admits that it is unable to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (as if the meaning of the words "it is proved to the satisfaction of the courts" contained in sections 123(1)(e) or 123(2) of the Insolvency Act 1986 did not appear in those sections), or (being an individual) is deemed either to be unable to pay its debts or as having no reasonable prospect of paying its debts, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing applies;
- d) the other Party begins negotiations with any class or all of its creditors about the rescheduling of any of its debts, or proposes any compromise or arrangements with any of its creditors or enters into the same, other than (being a company) solely for the purpose of a scheme for the solvent amalgamation of that other Party with one or more other companies or for the solvent reconstruction of that other Party;
- e) the other Party applies to the court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or otherwise in connection with the winding up of the other Party (being a company, limited liability partnership, or a partnership) other than solely for the purpose of a scheme for the solvent amalgamation of that other Party with one or more other companies or for the solvent reconstruction of that Party;
- g) an application is made to the court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given, or an administrator is appointed, over the other Party (being a company, limited liability partnership, or a partnership);
- h) the holder of a qualifying floating charge over the assets of that other Party (being a company or limited liability partnership) has become entitled to appoint, or has appointed, an administrative receiver;
- i) a person becomes entitled to appoint a receiver over any or all of the assets of the other Party, or a receiver is appointed over all or any of the assets of the other Party;
- j) the other Party (being an individual) is the subject of a bankruptcy petition, application, or order;
- k) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration, or other such process is levied or enforced on or sued against, the whole or part of the other Party's assets and such attachment or process is not discharged within 30 days;
- l) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject, that has a similar effect to any of the events set out above in sub-Clauses 14.1(c) to (k) (inclusive);

- m) the other Party ceases or suspends, or threatens to cease or suspend, carrying on all or a substantial part of its business;
 - n) the other Party (being an individual) dies, or due to illness or incapacity (whether mental or physical), becomes incapable of managing their own affairs or becomes a patient under any mental health legislation; or
 - o) there is a change of control of the other Party (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 14.3 For the purposes of sub-Clause 14.2(b), a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.

15. **Effects of Termination**

Upon the termination or expiry of the Contract for any reason:

- 15.1 any sum owing by either Party to the other Party under the Contract shall become immediately due and payable;
- 15.2 the Provider shall immediately return any and all Purchaser Materials and Purchaser Equipment in its possession. The Provider shall be fully and solely responsible for Purchaser Materials and Purchaser Equipment in its possession until they are returned to the Purchaser and shall not use the same for any purpose which is not connected with the Contract. In the event that the Provider fails to return any Purchaser Materials or Purchaser Equipment within 30 days of the termination or expiry of the Contract, the Purchaser shall have the right to enter the Provider's premises to take possession of them;
- 15.3 the Purchaser shall immediately return any and all Provider Materials and Provider Equipment in its possession. The Purchaser shall be fully and solely responsible for Provider Materials and Provider Equipment in its possession until they are returned to the Provider and shall not use the same for any purpose which is not connected with the Contract. In the event that the Purchaser fails to return any Provider Materials or Provider Equipment within 30 days of the termination or expiry of the Contract, the Provider shall have the right to enter the Purchaser's premises to take possession of them;
- 15.4 each Party shall (except to the extent referred to in Clause 7 (Confidentiality)) immediately cease to use, either directly or indirectly, any Confidential Information belonging to the other Party, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information;
- 15.5 termination or expiry shall not affect or prejudice any rights, remedies, obligations, or liabilities of the Parties that have accrued up to the date of termination or expiry including, but not limited to, the right to claim damages or any other remedy in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 15.6 any provision of the Contract which either expressly or by implication is intended to continue in force or come into force after or upon the termination or expiry of the Contract shall remain in full force and effect.

16. **No Waiver**

No failure or delay by either Party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Contract shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

17. **Further Assurance**

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Contract into full force and effect.

18. **Variation**

Other than as set out in these Terms and Conditions, no variation of the Contract including, but not limited to, the introduction of any additional terms and conditions, shall be effective unless it is made in writing and signed by the Parties (or their authorised representatives).

19. **Severance**

In the event that one or more of the provisions of the Contract is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Contract. The remainder of the Contract shall be valid and enforceable.

20. **Assignment and Sub-Contracting**

20.1 Subject to sub-Clause 20.2, the Contract shall be personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

20.2 Subject to the provisions of Clause 10 (Data Processing), the Provider shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of the Contract, be deemed to be an act or omission of the Party in question.

21. **Third party Rights**

21.1 No part of the Contract shall be intended to confer rights on any third parties and accordingly the Contracts (Rights of Third parties) Act 1999 shall not apply to the Contract.

21.2 Subject to this Clause 21, the Contract shall continue and be binding on the transferee, successors and assigns of either Party as required.

22. **Relationship of the Parties**

Nothing in the Contract shall constitute or be deemed to constitute a partnership, joint

venture, agency, or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Contract.

23. Notices

- 23.1 All notices under the Contract shall be in writing and deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 23.2 All notices under the Contract shall be addressed to the most recent postal address or email address given on the recipient Party's website or as otherwise notified in writing by either Party to the other from time to time.
- 23.3 Notices shall be deemed to have been duly given:
- a) when delivered, if delivered by courier or other messenger during the normal business hours of the recipient, on signature of a delivery receipt; or
 - b) when sent, if sent by email and a successful confirmation of receipt or read receipt is generated during the normal business hours of the recipient or, if sent outside the recipient's normal business hours, when such business hours resume; or
 - c) at 9.00 a.m. on the second Business Day following mailing or at the delivery time recorded by the relevant delivery service, if mailed by first-class mail, postage prepaid or by any other next working day delivery service.
- 23.4 For the purposes of this Clause 23, "normal business hours" shall mean 9.00 a.m, to 5.00 p.m. Monday to Friday on a day that is not a public or bank holiday.

24. Entire Agreement

- 24.1 Subject to the provisions of Clause 10 (Data Processing), the Contract constitutes the entire agreement between the Parties with respect to its subject matter.
- 24.2 Each Party acknowledges that, in entering into the Contract, it shall not rely on any representation, warranty, assurance or other provision (made innocently or negligently) except as expressly provided in the Contract.

25. Law and Jurisdiction

- 25.1 The Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 25.2 Any dispute, controversy, proceedings or claim between the Parties relating to the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

26. Continuing Effect

Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

27. Mitigation

Each party shall at all times take reasonable steps to minimise and mitigate any loss for which the relevant party is entitled to bring a claim against any other pursuant to this Agreement.

28. Counterparts

Agreements may be executed in one (1) or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all Parties shall constitute a full original of the Agreement for all purposes.

29. Bribery Act

29.1 The Provider warrants to the Purchaser that the Provider and its Staff, agents and sub-contractors shall comply with all the applicable laws, including those in relation to anti-bribery and corruption and the Bribery Act 2010 and that it has not and shall not commit any Prohibited Act (within the meaning of the Bribery Act 2010).

29.2 The Provider shall notify the Purchaser immediately in writing of any failure to comply with any provision of this clause. Any failure by the Provider to comply with any provision of this clause shall entitle the Purchaser to terminate this Agreement immediately without further liability and without prejudice to any other rights or remedies that may have accrued to the Purchaser's benefit under or in connection with this Agreement.

30. Modern Slavery

30.1 The Provider undertakes, warrants, and represents that neither the Provider nor any of its Staff, agents or sub-contractors has:

- a) Committed an MSA offence; or
- b) Been notified that it is subject to an investigation relating to an alleged MSA offence or prosecution under the Modern Slavery Act 2015; or
- c) Is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA offence or prosecution under the Modern Slavery act 2015.

31. Freedom of Information

If the Purchaser and/or Provider are subject to the requirements of the FOIA and the Environmental Information Requirements, the other Party shall facilitate compliance with their information disclosure requirements.