

General Terms & Conditions



1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

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

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 12.5.

“Computer Know-how” means all information relating to the Company or the Client not at present in the public domain (including information contained in or arising from research, designs, flow charts, expressions, methodology, logic flows, specifications, drawings, manuals, lists and instructions in whatever form held) relating to computer hardware and software or that content including:

- a) operating and applications software, including graphics, windows and hypermedia;
- b) menu structures, macro facilities, programming languages and tools, software interfaces, and source code;
- c) the design, development, selection, procurement, construction, installation, use, repair, service or maintenance of any software;
- d) the Company's or Client's current or future range of software of any description;
- e) the supply or storage of computer software or components thereof;
- f) quality control, testing or certification; and
- g) any media assets including but not limited to video, text, audio material, photographs, graphics, animation, artwork, scripts, story boards, treatments, synopses and any other preparatory and development materials.

Confidential Information: means information of commercial value, in whatever form or medium, disclosed by the party (or any of its Affiliates) to the other party (or any of its Affiliates), including the Computer Know How, commercial or technical know-how, technology, financial information, information pertaining to business operations or structure, services and strategies, know how, unpublished information relating to Intellectual Property Rights, and information pertaining to suppliers, customers, pricing and marketing and, for clarity, including (in the case of the Supplier's information) information relating to the Supplier software or any of its constituent parts, or source code.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions, Service Schedules, Appendices and Order Form.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

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

Customer Default: has the meaning set out in clause 4.2.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Deliverables: the deliverables set out in the Order produced by the Supplier for the Customer.

Group: in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a member of the Group.

Intellectual Property Rights (IPR): patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks, business names and domain names, rights in get-up goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for Services as set out the Order Form

Order Form: the Supplier's Order Form setting out the Services to be purchased by the Customer under these Conditions and which will be accepted and binding on signature by both parties or otherwise accepted in accordance with clause 2.2.

Order Term: the duration of the Services in an Order which shall be 12 months from the Commencement Date unless otherwise specified in the Order.

Renewal Term: each and every subsequent term for the provision of Services after completion of the Order Term, being for the duration of 12 months and as may apply in accordance with clause 2.3.

Restricted Business: has the meaning given in clause 11.1.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer under a Contract, as set out in the Order Form, applicable Service Schedule(s) and any accompanying Specification.

Service Schedules: the schedules to these Conditions which apply to different Services supplied by the Supplier to the Customer, as agreed in an Order.

Soliciting Party: has the meaning given in clause 11.2.

Supplier: Citation Cyber Limited, a company incorporated in England with registration number 08314901 and with its registered offices at The Old Tannery, Eastgate, Accrington, Lancashire, United Kingdom, BB5 6PW.

Supplier Materials: has the meaning set out in [clause 4.1\(h\)](#).

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes email.
- (d) In the event of any conflict or inconsistency between these Conditions, the Service Schedules and/or the Order Form, the following order of priority shall apply:
 - (i) Order Form
 - (ii) Service Schedules
 - (iii) Conditions

2. Basis of contract and duration

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted on the earlier of (i) both parties signing the Order Form; or (ii) the Supplier issuing written acceptance of the Order and commencing performance of the Services, at which point and on which date a Contract shall come into existence (**Commencement Date**) and continue for the Order Term.

2.3 At the end of the Order Term, the Contract shall automatically continue for the Renewal Term unless specified as a 'Fixed Term' in the Order Form, and subsequent Renewal Terms of the same duration, unless either party provides at least 2 months' written notice to terminate the Contract, such notice period to end no earlier than the last day of the Order Term or applicable Renewal Term, unless terminated in accordance with any special term contained with an Order Form or in accordance with clause 9.

2.4 If the parties agree the supply of any Services not included in a current Order, then the parties shall enter an additional Order in accordance with this clause 2.

2.5 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's marketing material electronic or otherwise, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.7 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue.

3. Supply of Services

3.1 The Supplier shall supply the Services to the Customer in accordance with the Order Form and applicable Service Schedule in all material respects.

3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in an Order Form, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

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

3.4 The Supplier warrants to the Customer that the Services will be provided using all reasonable care and skill to the standards of someone skilled and experienced in performance of the Services.

3.5 The undertakings in this clause 3 shall not apply to the extent of any non-conformance or delay which is caused by receipt of the Services contrary to the Supplier's instructions, or otherwise caused by the Customer. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative, comparable service. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertakings in this clause 3.

4. Customer's obligations

4.1 The Customer shall:

- (a) ensure that the terms of the Order Form and any information it provides in the Specification are complete and accurate;
- (b) comply with all obligations and other requirements in the Service Schedule(s) and applicable Order Form;
- (c) co-operate with the Supplier in all matters relating to the Services;
- (d) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, IT infrastructure, systems, networks, office accommodation and other facilities as reasonably required by the Supplier;
- (e) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (f) prepare the Customer's premises, IT infrastructure, systems and networks, for the supply of the Services;
- (g) Comply with all applicable laws in relation to a Contract, and obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
- (h) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises or otherwise in the Customer's possession (including electronically), in accordance with these Conditions and in safe custody at its own risk, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation,
- (i) comply with any additional obligations as set out in the Order Form.

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

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2.

5. Charges and payment

- 5.1 The Charges for the Services shall be calculated in accordance with the Order Form. For any services not detailed in an Order Form, the Charges shall be calculated on a time and materials basis in accordance with the Supplier's daily fee rates, as set out in its current price list or otherwise made available by the Supplier at the date of the Contract is formed.
- 5.2 The Supplier's daily fee rates for each individual are calculated on the basis of an eight-hour day from 9.00 am to 5.00 pm worked on Business Days.
- 5.3 the Supplier shall be entitled to charge an overtime rate of 150% of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 5.2, unless otherwise agreed in the Order Form.
- 5.4 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 5.5 Once the Contract has been formed in accordance with clause 2, the Customer cannot cancel any order for Services, however, the Customer may request any Services to be rescheduled on the following basis:
- the Customer may reschedule any Services without liability by providing the Supplier receives written notice to reschedule more than 28 calendar days prior to the Agreed Start Date (as set out in the Order Form) for the relevant Service; however, the Customer will be liable for the cost of any travel or accommodation expenses that have already been made by the Supplier and which are non-refundable;
 - the Customer may reschedule any Services from 28 to 21 calendar days prior to the Agreed Start Date by providing written notice at that time, subject to a rescheduling fee, in addition to the agreed Charges, equivalent to 25% of the total Charges for the Service;
 - the Customer may reschedule any Services from 20 to 11 calendar days prior to the Agreed Start Date by providing written notice at that time, subject to a rescheduling fee, in addition to the agreed Charges, equivalent to 50% of the total Charges for the Service;
 - the Customer may not reschedule the Services from 10 calendar days or fewer before the Agreed Start Date of a Service and the full Charges for the Services will still be payable by the Customer even if the Customer does not accept performance of the Services on the Agreed Start Date.
- 5.6 The Supplier reserves the right to reschedule a Service up to 10 Business Days prior to the Agreed Start Date without liability to the Customer.
- 5.7 The Supplier reserves the right to increase the Charges:
- on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index, as determined by the Office for National Statistics, in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and end of any subsequent Renewal Term;
 - to reflect any increase in costs to the Supplier in performing the Services due to changes in applicable law or regulation, or changes in the National Minimum Wage or National Insurance Contributions.
- 5.8 The Supplier reserves the right to increase the Charges at its discretion, by providing not less than 3 months' notice prior to the end of the Order Term or any Renewal Term, such increase to take effect at the end of such Order Term or Renewal Term.
- 5.9 The Supplier shall invoice the Customer as set out in the Order Form. If not specified in the Order Form, the Supplier shall invoice monthly in arrears.
- 5.10 The Customer shall pay each invoice submitted by the Supplier:
- within 30 days of the date of the invoice; and
 - in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Contract.
- 5.11 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**) and which shall be payable by the Customer on invoice.

5.12 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.12 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

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

6. Intellectual property rights

6.1 All Intellectual Property Rights in or arising out of or in connection with the Services, including without limitation the Deliverables, (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

6.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

6.3 The Supplier grants to the Customer a worldwide, non-exclusive, royalty free, licence to use and copy the Supplier Materials, and any Supplier or third party software involved in the supply of the Services, solely for the purpose and to the extent necessary for the Customer to receive the benefit of the Services, such licence to terminate on the earlier of (i) expiry or termination of the applicable Contract, or (ii) when use is no longer required by the Customer to receive the Services, as determined by the Supplier.

6.4 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2 or 6.3.

6.5 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

6.6 Supplier shall indemnify the Customer from and against any losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that use of the Deliverables infringes the Intellectual Property Rights of any third party (IPR Claim), provided that Supplier shall have no such liability if the Customer:

- (a) does not notify the Supplier in writing setting out full details of any intellectual property rights claim (IPR Claim) of which it has notice as soon as is reasonably possible;
- (b) makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Supplier;
- (c) does not let the Supplier, at its request and own expense, have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;
- (d) does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim;
- (e) does not, at the Supplier's request, provide the Supplier with all reasonable assistance in relation to the IPR Claim (at the Customer's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Customer.

6.7 If any IPR Claim is made or is reasonably likely to be made, Supplier may, at its option:

- (a) procures for the Customer the right to continue receiving the benefit of the relevant Services; or
- (b) modify or replace the infringing part of the Deliverables so as to avoid the infringement or alleged infringement, provided the Deliverables remain in material conformance to their Specification.

6.8 The Supplier's obligations under clauses 6.6 and 6.7 shall not apply to Services modified or used by the Customer other than in accordance with the Agreement and/or the Supplier's instructions.

6.9 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the software, documentation or other material provided by the Customer in connection with the Services.

7. Data protection

7.1 The Supplier will not process personal data as part of the Services unless performing social engineering services as confirmed in the Order Form. In the event the Supplier does process personal data on behalf on the Customer, the parties shall comply with their data protection obligations as set out in Appendix 1.

7.2 Both parties shall otherwise comply with the obligations under the Data Protection Laws in performance of their obligations under the Contract

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

8.1 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

8.2 Nothing in this clause 8 shall limit the Customer's payment obligations under the Contract.

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

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

8.4 Subject to clause 8.3 (Liabilities which cannot legally be limited), the Supplier's total liability to the Customer:

- (a) for loss arising from the Supplier's failure to comply with its data processing obligations under clause 7 shall not exceed five hundred thousand pounds (£500,000.00);
- (b) for loss arising from the Supplier's breach of the IPR Indemnity in clause 6.6 shall not exceed five hundred thousand pounds (£500,000.00); and
- (c) for all other loss or damage shall not exceed, in any calendar year, in relation to Services performed under an Order, the total Charges paid and/or payable in that calendar year under the respective Order.

8.5 Subject to clause 8.2 (No limitation of customer's payment obligations) and clause 8.3 (Liabilities which cannot legally be limited), this clause 8.5 sets out the types of loss that are wholly excluded:

- (a) loss of profits.
- (b) loss of revenue.
- (c) loss of sales or business.
- (d) loss of agreements or contracts.
- (e) loss of anticipated savings.
- (f) loss of use or corruption of software.
- (g) loss of or damage to goodwill; and
- (h) indirect or consequential loss.

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

8.7 This clause 8 shall survive termination of the Contract.

9. Termination

9.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
- (b) The other party persistently breaches its obligations under the Contract in such a manner the other party may reasonably deem that the defaulting party is unable or unwilling to fulfil their obligations;

- (c) the other party takes any step or action in connection with, or equivalent to, it entering receivership, administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), or being wound up;
- (d) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (e) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

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

- (a) the Customer fails to pay any amount due under the Contract within 30 days of the due date for payment; or
- (b) there is a change of control of the Customer to the extent the Customer becomes under the control of an entity which the Supplier reasonably views as a competitor.

9.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
- (b) the Customer becomes subject to any of the events listed in clause 9.2(b), 9.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

10. Consequences of termination

10.1 On termination of the Contract:

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

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

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

11. Protection of Business Interests

11.1 In order to protect the Confidential Information, business relationships and connections of the Supplier to which it has access in performance of the Services, the Customer shall not and shall procure that any Group Companies, shall not for the duration of the Contract and for 6 months afterwards:

- (a) solicit or endeavour to entice away from the Supplier the business or custom of any business which has been a client or prospective client of the Supplier in the preceding 12 months, is referred to in any Confidential Information, and/or has otherwise been introduced by the Supplier to the Customer in relation to the Contract (any and all of the preceding shall be a **Restricted Business**);
- (b) approach a Restricted Business with a view to providing goods or services to them in competition with the business of the Supplier;
- (c) engage a Restricted Business, or approach a Restricted Business with the intention of engaging, in relation to the Services or any other activity, sale, purchase, arrangement or otherwise which is similar to the Services, without the prior written consent of the Supplier;
- (d) be involved with; carry on, be engaged, concerned or interested in; assist in any way; or otherwise have any business dealings with, any business concern which is in competition with business of the Supplier.

11.2 Neither party shall, nor any Group Companies of it shall, without the prior written consent of the other party, at any time from the date of this agreement and for 12 months after discussions related to the Purpose cease, solicit or entice away from the other party or employ or attempt to employ any person who is, or has been, engaged as an employee, worker, self-employed, limited liability contractor, consultant or otherwise of the other party with respect to the Purpose. If a party

commits any breach of this clause 11.2 (**Soliciting Party**), the Soliciting Party shall, on demand, pay to the other party or relevant Group Company a sum equal to one year's basic salary or the annual fee that was payable by the Soliciting Party or relevant Group Company to the solicited person. The parties confirm that these liquidated damages are reasonable and proportionate to protect the legitimate interest of both parties in performance.

12. General

12.1 Force majeure. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

12.2 Assignment and other dealings.

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

12.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any Confidential Information except as permitted by clause 12.3(b).
- (b) Each party may disclose the other party's Confidential Information:
 - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.

12.4 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

12.5 Variation. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives). The process for varying the Services in an Order should be to issue and accept a replacement Order Form, such Order to constitute a variation in writing.

12.6 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

12.7 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

12.8 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in in the Order Form.

- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the Business Day after posting; or
 - (iii) if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 12.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause 12.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

12.9 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

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

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

Appendix 1: Data protection

1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Appendix 1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 1.1 The parties acknowledge that for the purposes of the Data Protection Legislation, if the Supplier processes Personal Data on behalf of the Customer in performance of Services, the Customer is the Controller and the Supplier is the Processor. The Order Form will set out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 1.2 Without prejudice to the generality of paragraph 1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of the Contract.
- 1.3 Without prejudice to the generality of paragraph 1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under a Contract:
 - (a) process that Personal Data only on the documented written instructions of the Customer unless the Supplier is required by applicable laws to otherwise process that Personal Data;
 - (b) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
 - (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
 - (h) maintain complete and accurate records and information to demonstrate its compliance with this Appendix 1.
- 1.4 The Customer consents to the Supplier appointing third party processors of Personal Data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processors into a written agreement [terms which are substantially similar to those set out in this Appendix 1 and in either case which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this paragraph 1.5.