

## AGREED TERMS

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this Clause apply in this Agreement.

**Agreement:** means the terms and conditions in this agreement along with the Service Specification.

**Acceptance Criteria:** means the acceptance criteria as specified in Clause 9.2 or referred to in a Service Specification or as otherwise agreed by the Parties expressly in writing after the date of the Service Specification against which the Acceptance Tests are to be carried out to determine whether the Deliverables meet the Service Specification, are satisfactory and ready to be invoiced.

**Acceptance Tests:** the acceptance tests as specified or referred to in the Service Specification to be undertaken to determine whether the Deliverables meet the Acceptance Criteria.

**Affiliate:** means in relation to any entity, (a) that entity; (b) any subsidiary undertaking or parent undertaking of such entity or a subsidiary undertaking of any such parent undertaking from time to time (as defined by section 1162 of the Companies Act 2006); or (c) any entity controlling, controlled by, or under common control with, the relevant entity or any of the aforementioned parent undertakings or subsidiary undertakings.

**Background Materials:** means all Intellectual Property Rights, know-how, information, methodologies, techniques, tools, schemata, diagrams, ways of doing business, trade secrets, instructions manuals and procedures (including, but not limited, to software, documentation, and data of whatever nature and in whatever media) owned, developed or controlled by the Supplier which may have been created outside the scope, or independently of, the Services and/or this Agreement, and including all updates, modifications, derivatives or future developments thereof.

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

**Business Systems:** the information technology and communication systems, including networks, hardware, software and interfaces owned by, or licensed to, the Clients or any of its agents or contractors.

**Change Request:** means any request to alter the Services pursuant to this Agreement as set out in Clause 13.

**Confidential Information:** all confidential information (however recorded or preserved) disclosed by a Party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services (together, its **Representatives**) to the other Party and that Party's Representatives in connection with this Agreement which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

**Commencement Date:** means the date of this Agreement.

**Client:** the entity name as set out in the Service Specification.

**Client Support Team:** the individuals appointed by the Client from time to time who shall serve as the Supplier's primary contacts for the Supplier's activities under this Agreement. The initial members of the Client Support Team are listed in the relevant Service Specification.

**Client Data:** any information that is provided by the Client to the Supplier as part of the Client's use of the Services, including any information derived from such information.

**Client Personal Data:** any Personal Data comprised in the Client Data.

**Client Site:** any premises used by the Client at which it receives the Services.

**Client's Operating Environment:** the Client's computing environment (consisting of hardware and software) that is to be used by the Client in connection with its use of the Managed Services and which interfaces with the Supplier's System in order for the Client to receive the Managed Services, but excluding the Client-side Equipment.

**Client-side Equipment:** any equipment located or to be located on a Client Site and provided by the Client but controlled or to be controlled exclusively by the Supplier as part of the Services.

**Data Controller:** has the meaning given to that term in the DPA.

**Data Processor:** has the meaning given to that term in the DPA.

**Deliverable:** means all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

**Document:** means, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**DPA:** the Data Protection Act 1998.

**Dispute Resolution Procedure:** the procedure described in Clause 27.

**Fees:** the fees payable to the Supplier, as described in the Service Specification.

**Force Majeure** any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including, without limitation, act of God, war, riot, civil commotion, compliance with any law or governmental order, rule, regulation or direction, flood or storm, save that strike or lock out of the party's own staff shall not entitle them to claim that to be a force majeure event.

**Good Industry Practice:** the standards that fall within the upper quartile of a skilled and experienced provider of business-critical managed services similar or identical to the Services, having regard to factors such as the nature and size of the Parties, the Service Level Arrangements, the term, the pricing structure and any other relevant factors.

**Hardware:** all physical telecommunications, networking and computer equipment (including switches, routers, cables, servers, racks, cabinets and peripheral accessories) provided and used by the Supplier to deliver the Managed Services to the Client.

**Initial Term:** from the period of time as set out in the relevant Service Specification unless otherwise agreed.

**Intellectual Property Rights or IPR:** any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including the Software, patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of Clients, marketing methods and procedures and advertising literature, including the "look and feel" of any websites, and in each case all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world, in each case for their full term, together with any future rights and renewals or extensions.

**IPR Claim:** means a claim arising from the infringement of IPR belonging to third parties.

**Issues List:** means a written list of the non-conformities to the Acceptance Criteria for a specific Deliverable.

**Losses:** means costs, fines, damages, losses and liabilities suffered by a Party.

**Maintenance:** any error corrections, updates and upgrades that the Supplier may provide or perform with respect to the Managed Services, as well as any other support or training services provided to the Client under this Agreement, all as described in the Services Specification, if applicable.

**Managed Services:** the support service described in the Service Specification (including any support arrangements and Maintenance) to be performed by the Supplier in accordance with this Agreement.

**Normal Business Hours:** 9.00 am to 6.00 pm local UK time on Business Days.

**Personal Data:** has the meaning given to that term in the DPA.

**Professional Services:** the service described in the Service Specification to be performed by the Supplier in accordance with this Agreement.

**Relief Events:** the following events:

- (a) any failure by the Client to comply with its obligations under this Agreement;
- (b) any error or malfunction in the Business Systems or any other software, hardware or systems for which the Supplier is not responsible or any failure by the Client, its agents or contractors (including any existing service provider) to obtain sufficient support and maintenance, as required, for any software, hardware or systems for which the Supplier is not responsible;
- (c) any failure by the Client or its agents or contractors (including any existing service provider) to provide any information, co-operation or instructions to the Supplier which is reasonably required by the Supplier for the proper performance of its obligations under this Agreement; or
- (d) any of the causes or events set out in Clause 11.7.

**Representative:** means the person nominated by each Party in accordance with this Agreement.

**Service Level Arrangements:** the service level arrangements set out in the Services Specification.

**Services:** means the Managed Services and the Professional Services including consulting, advisory, integration or technical services performed by the Supplier under a Service Specification or otherwise further to the signed written agreement between the Parties.

**Service Specification:** the specification for either the Professional Services and/or the Managed Services as agreed between the parties and as set out under separate cover.

**Supplier:** **PLURAL ZONE SOLUTIONS LIMITED** incorporated and registered in England and Wales with company number 08325389 whose registered office is at Springvale, Police Station Square, Mildenhall, Suffolk IP28 7ER.

**Supplier Support Team:** the individuals appointed by the Supplier from time to time who shall serve as the Client's primary contacts for the Client's activities under this Agreement. The initial members of the Supplier Support Team are listed in the relevant Service Specification.

**Supplier's System:** the system to be used by the Supplier in performing the Managed Services, including the Hardware, any Third Party Software, the Client-side Equipment and communications links between the Hardware and the Client-side Equipment and the Client's Operating Environment.

**Third Party Software:** any code or software programs written or provided by third parties which are used by the Client during the provision of the Services.

- 1.2 Clause, and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to **writing** or **written** including faxes and e-mail.

- 1.9 Any phrase introduced by the words **including, includes, in particular** or **for example**, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.10 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.11 In the event of any conflict or inconsistency between the Clauses of this Agreement and the Service Specification (including any changes to or additions or variations to the Service Specification), the terms of the Service Specification shall prevail.

## **2. PROVISION OF SERVICES**

- 2.1 This Agreement sets out the terms and conditions under which the Supplier shall provide to the Client the Services.
- 2.2 This Agreement shall (i) be in substitution for any prior oral or other prior arrangements between the Supplier and the Client in connection with the purchase of the relevant Services; and (iii) prevail over any inconsistent terms or conditions contained in, or referenced in, any order confirmation or other acknowledgement, quotation, delivery note, invoice or similar document or implied by law, trade custom or practice.
- 2.3 No addition to, variation of or other amendment or purported amendment to this Agreement shall be binding on the Parties unless expressly stated as such, made in writing and signed by a duly authorised Representative of both Parties.

## **3. MANAGED SERVICES**

- 3.1 The Supplier will provide the Managed Services with all due care, skill and ability during the Initial Term unless earlier terminated for any reason.
- 3.2 The Supplier shall provide the Managed Services in accordance with the Service Specification.
- 3.3 The Client shall not store, distribute or transmit any material through the Managed Services that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
  - (b) facilitates illegal activity;
  - (c) depicts sexually explicit images; and/or
  - (d) promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion and belief, gender reassignment, or any other illegal activities.
- 3.4 The Client shall remain responsible for the use of the Managed Services under its control, including any use by third parties that the Client has authorised to use the Managed Services.

- 3.5 The Client must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Client by the Supplier in writing. This includes informing the Supplier promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, the Supplier will work with the Client to alleviate the situation as quickly as possible. The Parties shall discuss and agree appropriate action (including suspending the Managed Services).
- 3.6 The Client shall not provide the Managed Services to third parties without the prior written consent of the Supplier.
- 3.7 The Client acknowledges that the Supplier may at any time, with the Client's prior written approval, incorporate licence management software into elements of the Managed Services for the purposes of ensuring that licence rights are not exceeded, where the Supplier has a licencing responsibility for software installed on the Client server. Any such costs relating to such incorporation shall be at the Client's sole cost and expense.
- 3.8 The Client acknowledges that certain conditions outside of the Supplier's control may adversely impact the ability of the Supplier to perform functions of the Managed Services. Examples of such conditions are listed below:
- (a) failure of Client Hardware, software or operating system;
  - (b) Network connectivity issues between Client server and the Supplier's monitoring platform.
- 3.9 The Supplier reserves the right to:
- (a) modify the Supplier's System, its network, system configurations or routing configuration; or
  - (b) modify or replace any Hardware or Software in its network or in equipment used to deliver any Managed Service over its network,

provided that this has no adverse effect on the Supplier's obligations or performance under this Agreement and its provision of the Managed Services or the Service Level Arrangements. If such changes will have an adverse effect, the Supplier shall notify the Client and the Parties shall follow the Change Request.

#### **4. RESPONSIBILITIES OF SUPPLIER**

- 4.1 The Supplier shall:
- (a) provide the Services in accordance with the terms of this Agreement and the Service Specification;
  - (b) use its commercially reasonable endeavours to complete any Deliverables set out under any Service Specification;
  - (c) where expressly agreed, document the Services and provide to the Client copies of the documentation upon request and at the completion or termination of the Service Specification;

- (d) commit sufficient resource to the provision of the Services to enable their delivery in accordance with the Agreement and Service Specification;
  - (e) provide the Services with due care, skill and ability in accordance with Good Industry Practice;
  - (f) take such steps as may be required to fulfil its obligations under this Agreement and any Service Specification;
  - (g) utilising suitably skilled, qualified, experienced, supervised and vetted employees, agents, representatives and authorised sub-contractors who will exercise all reasonable skill and care;
  - (h) notify the Client immediately if the Supplier is unable to comply with any of the terms of this Agreement or any Service Specification; and
  - (i) observe and ensure that its personnel observe all health and safety rules and regulations and any other security requirements that apply at any of the Sites and which have been communicated to it, where the Supplier is required to be on such Sites for the provision of the Services.
- 4.2 The Supplier shall co-operate with the Client in all matters relating to the Services and shall appoint a Representative (“Supplier Representative”), who shall have authority to commit the Supplier on all matters relating to the relevant Services.
- 4.3 The Client confirms that the Supplier may employ sub-contractors without seeking the prior consent of the Client (and any such sub-contractors shall be treated as the Supplier’s employees for the purposes of this Agreement). Notwithstanding the foregoing, the Supplier shall at all times be responsible for and liable in respect of the performance of all obligations under this Agreement, whether such obligations are performed by the Supplier itself, or any sub-contractor engaged by the Supplier.
- 4.4 The Supplier shall provide reasonable notice to the Client of any change in its senior personnel engaged as part of the Project. Where relevant, the Supplier shall replace any senior personnel who are removed with another appropriately skilled person.
- 4.5 Supplier does not and cannot control the flow of data to or from its network and other portions of the internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or omissions of such third parties can impair or disrupt connections to the internet (or portions thereof). Whilst Supplier will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, Supplier cannot guarantee that such events will not occur. Accordingly, the Supplier disclaims any and all liability resulting from or related to such events.
- 4.6 In relation to the Managed Services specifically and notwithstanding the Supplier’s obligations under clause 4.1, the Supplier shall:
- (a) staff the Supplier support desk with a team of skilled individuals (whether subcontracted or not);

- (b) maintain a team skilled in the platform and with knowledge of the code developed to deliver the solution;
  - (c) maintain a comprehensive IT service management solution, with integrated knowledge base and how-to guides to reduce the time to issue resolution;
  - (d) undertake a regular account review, to discuss the Client's service needs and ensure that the Agreement is in alignment with its needs;
  - (e) provide continuously available online call logging, call management and progress monitoring;
  - (f) be a bona fide licensed user of all Third Party Software and of the Supplier's Software;
  - (g) use commercially reasonable endeavours to follow the instructions of the Client and will remain courteous during any communications with Client personnel; and
  - (h) provide the Client with all necessary co-operation in relation to this Agreement.
- 4.7 The Supplier shall be under no obligation to provide the Managed Services to the Client in the following circumstances;
- (a) unauthorised use of the Software by the Client or use otherwise than in accordance with this Agreement;
  - (b) providing the Managed Services outside Normal Business Hours unless otherwise agreed between the Parties in writing;
  - (c) providing any other services not covered herein;
  - (d) training in use of any upgrades; and
  - (e) providing the Managed Services to the Client where such support would have been unnecessary if the Client had implemented update(s) and upgrade(s) supplied or offered to the Client pursuant to the call for technical support.

## **5. RESPONSIBILITIES OF CLIENT**

- 5.1 To the extent that the Supplier requires access to the Client Site to perform the Services, the Client shall use reasonable endeavours to provide such access during normal business hours and to provide a suitable work environment to enable the Supplier to perform such Services subject to the Supplier complying with such internal policies and procedures of the Client (including those relating to security and health and safety) as may be notified to the Supplier in writing from time to time.
- 5.2 The Client shall co-operate with the Supplier in all matters relating to the Services and shall appoint a Representative ("Client Representative"), who shall have authority to commit the Client on all matters relating to the relevant Project.
- 5.3 Client shall:



- (a) be a bona fide licensed user of all Third Party Software used by it;
- (b) co-operate with the Supplier in all matters relating to the Services as reasonably requested by the Supplier;
- (c) adhere to the dates scheduled for provision of Services by the Supplier to the Client as stated in the applicable Service Specification or otherwise agreed between the Parties in writing. In the event the Client wishes to reschedule or cancel the dates for the provision of Services, liquidated damages (“**Liquidated Damages**”) will become payable from the Client to Supplier on the following basis:
  - (i) If dates are changed or cancelled at the Client’s request more than 14 days before the scheduled start date no Liquidated Damages are payable.
  - (ii) If dates are changed or cancelled between 7 days and 14 days before the scheduled start date Liquidated Damages equivalent to 50% of the Fees for the Services to be provided at that time will be payable.
  - (iii) If dates are changed or cancelled less than 7 days before the scheduled start date Liquidated Damages equivalent to 100% of the Fees for the Services to be provided at that time will be payable.
- (d) provide such access to the Client’s systems, software and platforms as may reasonably be requested by the Supplier;
- (e) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client’s premises;
- (f) allow the Supplier to publicise the work the Supplier undertakes under this Agreement for the Client including but not limited to case studies. For the avoidance of doubt, this shall include use of any and all logo’s and trademark names;
- (g) provide appropriate hardware interface, software and access authorisation to enable remote diagnosis, should such capability be required;
- (h) provide all information and make available all resources as reasonably requested by Supplier in the execution of its obligations under this Agreement;
- (i) use all reasonable efforts to follow the reasonable instructions of Supplier support personnel with respect to the resolution of defects;
- (j) gather all relevant information prior to requesting assistance in respect of any defects including detailed defect description, and procedures required to replicate a problem if possible. Any additional information which may help in the diagnosis of a defect should be included such as network configuration details;
- (k) provide Supplier with access to the Client’s production computer system via a secure broadband link operating at the industry accepted bandwidth for the purposes of remote diagnostics should such capability be required; and
- (l) agree that if, in the course of performing the Services, it is reasonably necessary for the Supplier’s performance of its obligations under a Service Specification for Supplier to access or use any equipment, software or data of the Client (or which is in the possession of the Client) then it shall where it is able to do so grant to Supplier

a non-exclusive, royalty free, terminable licence to use the same solely for the purpose of delivering the Services only for as long as is strictly necessary to deliver such Services.

5.4 To the extent that the Supplier requires access to the Client's Operating Environment to perform the Managed Services, the Client shall use reasonable endeavours to provide such access during Normal Business Hours and to provide a suitable work environment to enable the Supplier to perform such Managed Services subject to the Supplier complying with such internal policies and procedures of the Client (including those relating to security and health and safety) as may be notified to the Supplier in writing from time to time.

5.5 The Client shall:

- (a) use the Services only for lawful purposes and in accordance with this Agreement;
- (b) keep secure from third parties any passwords issued to the Client by the Supplier;
- (c) fully virus-check all data supplied to the Supplier pursuant to this Agreement;
- (d) make Client's Operating Environment and Client-side Equipment, required to provide the Services, accessible to the Supplier's support staff, enable logons or passwords required for such support staff (who will have their own logons);
- (e) ensure that the Supplier is able to access the systems needed to provide remote support, including but not limited to remote desktop access or screen sharing system.
- (f) permit the Supplier to install the current version of software required to provide the Managed Services from time to time when upgrades or fixes occur and to provide a reasonable level of assistance in implementation and testing, such costs to be agreed between the Parties and as set out in the Service Specification;
- (g) provide notice of intention to change applicable Client-side Equipment or Client Operating Environment or data-feeds that will directly impact the Managed Services;
- (h) gather all relevant information prior to requesting assistance including detailed fault description, and procedures required to replicate a problem if possible. Any additional information which may help in the diagnosis of a fault should be included such as network configuration details;
- (i) comply with all applicable laws and regulations with respect to its activities under this Agreement, including those set out in Clause 20; and
- (j) carry out all other Client responsibilities set out in this Agreement or in any of the schedules in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the Parties, the Supplier may adjust any timetable or delivery schedule set out in this Agreement as reasonably necessary.

5.6 If the Client is in breach of any obligations under this Agreement (including payment obligations) which has not been directly caused by the actions of the Supplier, and such breach is not remedied within 14 calendar days, then Supplier shall have the right to suspend immediately any related Services if deemed reasonably necessary by Supplier to protect the

proper interests of Supplier or its other Clients. The Supplier shall have no liability or responsibility should the Services fail to comply with the Service Specifications and/or Service Level Arrangements as a direct result of the Client (including without limitation any of its employees, subcontractors or any of its staff) being in breach of the Agreement.

## **6. PROJECT ORGANISATION**

- 6.1 The Client Representative and the Supplier Representative shall have regular monthly meetings to monitor and review the performance of this Agreement, to discuss any changes proposed in accordance with Clause 13 and to discuss the Service Level Arrangements.
- 6.2 Before each meeting, the Client Representative shall notify the Supplier Representative, and vice versa, of any problems relating to the provision of the Services for discussion at the meeting. At each such meeting, the Parties shall agree a plan to address such problems. In the event of any problem being unresolved or a failure to agree on the plan, the matter shall be resolved in accordance with the Dispute Resolution Procedure. Progress in implementing the plan shall be included in the agenda for the next meeting.

## **7. PRICE AND PAYMENT**

- 7.1 The Client shall pay the Fees for the Services in accordance with the Service Specification.
- 7.2 The Fees exclude
- (a) out of pocket expenses (if any) as provided for in the applicable Service Specifications;
  - (b) VAT or other relevant sales tax, which the Supplier shall add to its invoices at the appropriate rate.
- 7.3 Each invoice is due and the undisputed portion payable thirty (30) days after the invoice is received by the Client. The Supplier be entitled to charge interest on all undisputed amounts, such interest to accrue on any overdue amounts at the rate of two (2) % over the base lending rate of the Barclays Bank Plc, commencing on the due date and continuing until fully paid, whether before or after the judgment.
- 7.4 The Parties shall follow the Dispute Resolution Procedure to resolve disputed portions of invoices. All disputed amounts which it shall subsequently be agreed or determined are properly payable shall be payable no more than ten (10) days after the date of agreement or determination together with interest on such amounts at the rate of two (2) % over the base lending rate of the Barclays Bank Plc, for the period from the date of the original invoice for such amounts until full payment (whether before or after judgement).
- 7.5 On each anniversary of the signing of this Agreement, Fees may rise in accordance Consumer Price Index as published by the Office for National Statistics, United Kingdom or 1%, whichever is higher.

7.6 The Client is wholly responsible for the payment of any withholding tax and/or any other taxes that may be imposed by any other third parties including, but not limited, to government agencies.

## **8. WARRANTIES**

8.1 The Client warrants that:

- (a) it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Client;
- (b) it has the authority to grant any rights to be granted to the Supplier under this Agreement, including the right to provide any Third Party Software and Hardware to the Supplier as indicated in this Agreement and for the same to be used in the provision of the Services and otherwise in connection with this Agreement;
- (c) it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to licence to the Supplier, any materials reasonably necessary for the fulfilment of all its obligations under this Agreement, including any third-Party licences and consents in respect of any Third Party Software; and
- (d) the Supplier's use in the provision of the Managed Services or otherwise in connection with this Agreement of any third-Party materials, including any Hardware or Software supplied by the Client to the Supplier for use in the provision of the Managed Services or otherwise in connection with this Agreement, shall not cause the Supplier to infringe the rights, including any Intellectual Property Rights, of any third party.

8.2 The Supplier warrants and represents that:

- (a) it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Supplier;
- (b) it owns or has obtained valid licences, consents, permissions and rights to enable the Supplier to comply with this Agreement and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under this Agreement including for the Client's use and receipt of the Managed Services, and the Supplier shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached;
- (c) it will comply with all applicable laws in performing its obligations under this Agreement; and
- (d) the Client's use of any Supplier materials and/or third-party materials, including any materials supplied by the Supplier to the Client, shall not cause the Client to infringe the rights, including any Intellectual Property Rights, of any third party.

8.3 Except for any warranties expressly set forth in this Agreement, the Services are provided on an "as is" basis, and Client's use of the Services is at its own risk. The Supplier does not make, and hereby disclaims, any and all other express and/or implied warranties, statutory or

otherwise, including, but not limited to, warranties of merchantability, fitness for a particular purpose and any warranties arising from a course of dealing, usage, or trade practice.

- 8.4 Save only as may be provided for otherwise under any Service Specification, the Supplier makes no warranty or representation of any data backup with the Services. The Client is responsible for all database and/or system back-ups as required before any change is carried out.
- 8.5 The Supplier warrants that the Managed Services will be performed with all reasonable skill and care and that it will be provided in accordance with the Service Specification and the terms and conditions of this Agreement.
- 8.6 The warranty in Clause 8.5 shall not apply to the extent of any non-conformance that is caused by use of the Managed Services contrary to the Supplier's instructions.
- 8.7 The Supplier shall not in any circumstances be liable under the warranties in this Clause 8 if it can demonstrate that any failure of the Services to comply with such warranties was caused or contributed to by any Relief Event.
- 8.8 If the Managed Services do not conform with the warranty in Clause 8.5, the Supplier shall, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance.
- 8.9 Notwithstanding the foregoing, the Supplier does not warrant that the Client's use of the Services will be uninterrupted or error-free.
- 8.10 The Client hereby warrants that it has not been induced to enter into this Agreement by any prior representations, nor has it relied on any oral representation made by the Supplier or upon any descriptions, illustrations or specifications contained in any catalogues and publicity material produced by the Supplier.

## **9. ACCEPTANCE**

- 9.1 The Service Specification shall specify the Deliverables that are to be subject to Acceptance Testing and provide a framework for the nature of the testing that will be required.
- 9.2 In relation to any Acceptance Testing:
- (a) the Client shall have a reasonable period of time, up to five Business Days unless otherwise specified in the Service Specification, from the Supplier's delivery of each Deliverable under the Service Specification (the "**Acceptance Period**") to confirm that such Deliverable conforms to the acceptance criteria as agreed between the Parties (collectively, the "**Acceptance Criteria**"). If the Client determines that a Deliverable does not conform to the Acceptance Criteria, the Client shall by the last day of the Acceptance Period provide to the Supplier an Issues List of the non-conformities to the Acceptance Criteria;

- (b) the Client shall use best efforts to correctly and efficiently ensure appropriate Acceptance Testing in relation to any Deliverable which is subject to Acceptance Tests and shall notify the Supplier within the Acceptance Period (as defined in Clause 9.2(a)) if any of the Deliverables do not conform to the Acceptance Criteria. In the event that Client has undertaken the Acceptance Testing within the Acceptance Period and fails to reject any Deliverable within the relevant Acceptance Period, for all purposes under these Conditions such Deliverable, shall be deemed accepted as if the Client had issued a written acceptance thereof. For the avoidance of doubt, should any non-conformities be found in earlier stages of the Deliverables but which were not highlighted to the Supplier during the applicable Acceptance Period, such non-conformities shall not be subject to the remedies as set out in Clause 9.2 (c) below.
- (c) If there are any non-conformities within any Deliverable, which have been highlighted by Client or the Supplier during the Acceptance Period and whereby the Deliverable has not been accepted by the Client for this reason and such non-conformity is a directly attributable act or omission on the part of the Supplier (and not subject to a Change Request (as defined in Clause 14) or attributable to the Client's acts or omissions including inadequate Acceptance Testing) the Supplier shall (without prejudice to the Client's other rights and remedies) carry out all necessary remedial work without additional charge as part of the next Deliverable which shall accordingly be modified.
- (d) If any non-conformity cannot be remedied by the Supplier due to an error, defect or fault which the Supplier is able to demonstrate to the reasonable satisfaction of the Client to be outside the Supplier's control and which has disabled the Supplier's ability to remedy such non-conformity, then the Supplier reserves the right to terminate work on that specific Deliverable. Supplier agrees not to charge Client, any amounts paid or payable by Client to Supplier which specifically relate to the non-conforming Deliverable which cannot be remedied.

## **10. CLIENT DATA**

- 10.1 The Supplier shall promptly notify the Client in writing of any loss or damage to the Client Data. In the event of any loss or damage to Client Data, the Supplier shall use reasonable commercial endeavours to restore the lost or damaged Client Data from the latest backup of such Client Data (and for the avoidance of doubt the provisions of Clause 8.4 apply to backup data). Subject to Clause 4.3, the Supplier shall not be responsible for any loss, destruction, alteration or unauthorised disclosure of Client Data caused by any third party.
- 10.2 Each Party undertakes that it shall comply with the DPA and all applicable changes in law, including any subsequent legislation that may amend and/or supersede the DPA, when performing its obligations under this Agreement. The Parties acknowledge that the European General Data Protection Regulation (**GDPR**) shall apply during the term of this Agreement. The Parties agree that they shall enter into such variation of this Agreement and execute such additional documentation and make any required changes to the Services as is reasonably required to reflect their obligations under the GDPR and in order for the Supplier to provide

the Services in a manner that would allow the Client to be compliant with the GDPR, based on the Client's obligations as a Data Controller and the Supplier's obligations as a Data Processor or each party's obligations as a Data Controller, as applicable. The Client shall be the Data Controller, and the Parties hereby acknowledge that the Supplier will be acting as Data Processor in respect of all data processing activities in relation to Client Data that the Supplier carries out under this Agreement.

10.3 The Supplier undertakes to the Client that:

- (a) it shall process the Client Personal Data only in accordance with the written instructions of the Client and to the extent, and in such a manner, as is reasonably necessary to supply the Services in accordance with this Agreement or as is required by any applicable law;
- (b) in respect of Client Personal Data of the Client, which is in the possession or under the control of the Supplier, it shall implement the technical and organisational measures to protect this Client Personal Data against unauthorised or unlawful processing and accidental loss, destruction, alteration or disclosure;
- (c) it shall not (and shall ensure that its personnel do not) publish, disclose or divulge any Client Personal Data to any third party, nor allow any third party to process Client Personal Data on the Supplier's behalf without the prior written consent of the Client; and
- (d) it shall use reasonable endeavours to assist the Client with any subject access request that the Client receives relating to Client Personal Data processed by the Supplier under this Agreement.

## 11. INTELLECTUAL PROPERTY RIGHTS

11.1 Subject to Clause 11.2 below, on creation by the Supplier and upon the Supplier receiving payment in full, all Intellectual Property Rights in bespoke materials or code created under the Services ("**Bespoke IPR**") for the Client shall vest automatically on creation in the Client. Supplier hereby assigns to the Client its present and future rights and full title and interest in such creations, including but not limited to workflows, widgets, business processes, and customised web coding which are used in order to provide the Services. The Client hereby provides a irrevocable, worldwide, royalty-free licence to the Supplier for the duration of this Agreement to use such Bespoke IPR strictly for the purposes of providing the Services.

11.2 Notwithstanding Clause 11.1 above, the Supplier shall retain exclusive ownership of (i) all of its Background Materials; and (ii) ideas, concepts, techniques and know-how discovered, created or developed by the Supplier during the performance of the Services that are of general application and that are not based on or derived from the Client's business or Confidential Information ("**General IPR**", together with the Background Materials, the "**Supplier IPR**"). The Supplier grants to the Client a non-exclusive, irrevocable, worldwide royalty free and non-transferable license to use the Supplier IPR .

11.3 The Client shall pay and indemnify Supplier and hold it harmless on demand, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by Supplier,

arising by reason of claims that (1) Supplier's possession of or use of the Client's Intellectual Property in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (2) the Client or any of its clients, modify, alter, replace combine with any other data, code, documents or other software, which alters the Supplier IPR and such alterations infringe the Intellectual Property Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.

- 11.4 The Supplier shall pay and indemnify Client and hold it harmless on demand, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by Client, arising by reason of claims that (1) Client's possession of or use of the Supplier IPR in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (2) the Supplier, modify, alter, replace combine with any other data, code, documents or other software, which alters the Client's Intellectual Property and such alterations infringe the Intellectual Property Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- 11.5 If an IPR Claim in respect of the Bespoke IPR or the Supplier IPR is brought or in the reasonable opinion of the Supplier is likely to be made or brought, Supplier may at its own expense ensure that the Client is still able to use the Deliverables by either:
- (a) modifying any and all of the provisions of the Deliverables without reducing the performance and functionality for any or all of the provision of the Deliverables, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted services and such modified or substituted services shall be acceptable to the Client, such acceptance not to be unreasonably withheld; or
  - (b) procuring a license or permission to use the Deliverables on terms which are acceptable to the Client, such acceptance not to be unreasonably withheld.
- 11.6 The Client shall promptly notify the Supplier if any IPR Claim or demand is made or action brought against the Client for infringement or alleged infringement of any third party right which may affect the provision of Deliverables.
- 11.7 The Supplier shall have no obligation or liability for any IPR Claim to the extent such IPR Claim arises from:
- (a) any use by or on behalf of the Client of the Deliverables with any item not supplied or recommended by the Supplier where such use of the Deliverables directly gives rise to the claim, demand or action; or
  - (b) any modification carried out on behalf of the Client to any item supplied by the Supplier under this Agreement if such modification is not authorised by the Supplier in writing where such modification directly gives rise to a claim, demands or action.
- 11.8 The Supplier shall procure on behalf of the Client, any Third-Party Software required by the Client in conjunction with the Services. The Supplier expressly excludes any warranty to the



Client that the Third-Party Software supplied or licensed by it under this Agreement will operate substantially in accordance with, and perform, the material functions and features as set out in the its marketing, sales or other associated documentations. The Client shall remain liable for any and all payments owed to the Supplier throughout this Agreement and until the end of the respective licence terms and shall adhere to any End User Licence Agreements sent by such third party in relation to the Third-Party Software.

## **12. EXCLUSIONS, LIMITATIONS OF LIABILITY, WARRANTIES AND INDEMNITIES**

12.1 The Client acknowledges and agrees that, except as expressly provided in this Agreement, the Client assumes sole responsibility for:

- (a) results obtained from the use of the Services and the Documents by the Client, and for conclusions drawn from such use;
- (b) procuring and maintaining the Business Systems, and all network connections from the Business Systems to the Supplier's systems and data centres;
- (c) all problems, conditions, delays, delivery failures (including any of those concerning transfer of data) and all other loss or damage arising from or relating to the Client's or its agents' or contractors' (including any existing service provider's) network connections or facilities, including the internet and acknowledges that the Services and the Deliverables may be subject to limitations, delays and other problems inherent in the use of such connections, links or facilities; and
- (d) loss or damage arising from or relating to any Relief Event.

12.2 This Clause **Error! Reference source not found.** sets out the entire financial liability of each Party (including any liability for the acts or omissions of its employees, agents and subcontractors) in respect of:

- (a) any breach of this Agreement; and
- (b) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

12.3 Nothing in this Agreement excludes or limits either Party's liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of Clauses 11.3, 11.4, 14 (if such breach was deliberate) and 19; or
- (d) any other liability which cannot lawfully be excluded or limited.

12.4 Subject to Clause 12.212.3, the Service Level Arrangements state the Client's full and exclusive right and remedy, and the Supplier's only obligation and liability, in respect of the performance and availability of the Managed Services, or their non-performance and non-availability.

- 12.5 Each Party's total aggregate liability to the other Party in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to one hundred percent (100%) of the price paid for the Services during the twelve (12) months preceding the date on which the claim arose. Under no circumstances shall either Party hereto be liable to the other Party for indirect, incidental, consequential, special or exemplary damages (even if such Party has been advised of the possibility of such damages) such as, but not limited to, loss of revenue or anticipated profits or lost business.
- 12.6 Except as expressly and specifically provided in this Agreement:
- (a) the Client assumes sole responsibility for results obtained from the use of the Managed Services, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Client in connection with the Managed Services, or any actions taken by the Supplier at the Client's direction; and
  - (b) all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

### **13. CHANGE REQUESTS**

- 13.1 Either Party may request changes to any Service Specification (in each case, a "Change Request"). Any Change Request shall be made in writing and sent to the Client representative or Supplier representative (as appropriate) and shall set out the change in sufficient detail so as to enable the other Party to make a proper assessment of such change.
- 13.2 Where the Party's propose a Change Request the Supplier shall provide the Client with a written estimate of the likely time required to implement the change, any necessary variations to the Charges as a result of the change, the likely effect of the change on the Services; and any other impact of the change on the terms of this Agreement. The Client shall notify the Supplier whether it accepts or reasonably rejects the Change Request within five working days of its receipt of the written estimate.
- 13.3 A Change Request shall become a "Change Order" only when a change order including the details in the Change Request, any variations to the Services, the Charges and this Agreement and any such other matters as the parties shall agree is signed by a duly authorised representative of both Parties to signify their approval to the change. Until such time the Parties shall continue to perform their respective obligations under the Service Specification without taking into account the Change Request. Once duly signed, Change Orders shall be deemed incorporated into Agreement and Service Specification and the Supplier shall commence performance of the Change Order accordingly.
- 13.4 Neither Party shall be required to accept any Change Request made by the other Party and shall not be bound by the Change Request unless it has been agreed in writing as set out above.

13.5 Unless otherwise agreed in writing, Supplier shall be entitled to charge the Client at Supplier's then current rates for investigating, reporting on and, if appropriate, implementing any Change Request requested by the Client.

13.6 Once changes have been agreed by the Parties, the Parties shall sign the Change Request Form (as set out in Schedule 1 of this Agreement).

#### **14. CONFIDENTIALITY**

14.1 Each Party agrees and undertakes that it will treat all Confidential Information disclosed to it by the other Party in connection with the Services as strictly confidential and shall use it solely for the purpose intended by the Services and shall not, without the prior consent of the other Party, publish or otherwise disclose to any third party any such Confidential Information except for the purposes intended by the relevant Service Specification.

14.2 To the extent necessary to implement the provisions of any Services, each Party may disclose Confidential Information to its employees, agents, sub-contractors and professional advisers, in each case under the same conditions of confidentiality as set out in Clause 14.1. and the Party making such disclosure shall be liable to the other Party for any failure of such persons to whom it may disclose Confidential Information to comply with such conditions

14.3 The obligations of confidentiality set out in this Clause 14 shall not apply to any information or matter which: (i) is in the public domain other than as a result of a breach of this Agreement; (ii) was in the possession of the receiving Party prior to the date of receipt from the disclosing Party or was rightfully acquired by the receiving Party from sources other than the disclosing Party; (iii) is required to be disclosed by law, or by a competent court, tribunal, securities exchange or regulatory or governmental body having jurisdiction over it wherever situated; or (iv) was independently developed by the receiving Party without use of or reference to the Confidential Information.

#### **15. TERM AND TERMINATION**

15.1 This Agreement shall commence on the Commencement Date and each Service Specification shall commence on the date stated in the Service Specification and shall continue in force unless and until terminated in accordance with the provisions of this Agreement or of any Service Specification as applicable.

15.2 This Agreement shall, unless terminated earlier in accordance with this Clause, automatically be extended for successive twelve (12)-month periods (**Extended Term**) at the end of the Initial Term and at the end of each Extended Term, unless a Party gives written notice to the other Party, not later than ninety (90) days before the end of the Initial Term or the relevant Extended Term, to terminate this Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.

- 15.3 Either Party may terminate this Agreement in its entirety or in respect of a specific Service Specification only at any time with immediate effect by giving written notice to the other Party if the other Party:
- (a) commits a material breach of any term of this Agreement or any Service Specification and such breach is irremediable or, the other Party fails to remedy where it is capable of remedy or, persists in, any breach of any of its obligations under the Agreement or any Service Specification after having been required in writing to remedy or desist from that breach within a period of 30 days; or
  - (b) becomes insolvent or has a receiver or administrative receiver appointed, has called a meeting of creditors, resolves to go into liquidation or has a petition for its winding up presented (except for any bona fide amalgamation or reconstruction while solvent); or
  - (c) suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 15.4 The Supplier may terminate this Agreement in its entirety with immediate effect by giving written notice to the Client in the event that the Client fails to comply with its payment obligations under the Agreement and this failure continues for ten (10) days or more following written notice from the Supplier.
- 15.5 Without prejudice to any rights that the Parties have accrued under this Agreement or any of their respective remedies, obligations or liabilities, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:
- (a) the other Party commits a material breach of any material term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified to do so;
  - (b) the other Party breaches any of the terms of Clauses 10, 11, 14, 15, 16 or 19;
  - (c) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - (d) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 15.6 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination.
- 15.7 On termination of this Agreement for any reason:
- (a) the Supplier shall immediately cease provision of the Services; and
  - (b) each Party shall use reasonable endeavours to return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other Party.

- 15.8 Save as provided in this clause 15 or elsewhere in this Agreement, or by mutual consent and on agreed terms, or due to a Force Majeure event, neither Party shall be entitled to terminate a Service Specification.
- 15.9 Termination of any Service Specification shall be without prejudice to any other rights which any party may have under any other Service Specification.
- 15.10 The provisions of clauses 8, 10, 11,12,14,16 and 19 shall survive termination of any Service Specification.

## **16. STAFF TRANSFER AND NON SOLICITATION**

- 16.1 It is not intended that any staff be transferred from the Supplier to the Client or from the Client to the Supplier pursuant to this Agreement or that any 'relevant transfer' occur for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('the Regulations').
- 16.2 Neither party shall solicit the other party's staff or contractors who have been employed or engaged in the Schedule of the Services or the performance of this Agreement during the lifetime of this Agreement and for a period of 9 months thereafter. For the purposes of this clause 'solicit' means the soliciting of such person with a view to engaging such person as an employee, director, sub-contractor or independent contractor.
- 16.3 In the event that either party is in breach of clause 16.2 above then the party in breach shall pay to the other by way of liquidated damages an amount equal to 50% per cent of the gross annual budgeted fee income (as at the time of the breach or when such person was last in the service of the relevant party) of the person so employed or engaged. This provision shall be without prejudice to either party's ability to seek injunctive relief.
- 16.4 The parties hereby acknowledge and agree that the formula specified in clause 16.3 above is a reasonable estimate of the loss which would be incurred by the loss of the person so employed or engaged.

## **17. RELIEF EVENTS**

Subject to clause 12.3, and notwithstanding any other provision of this Agreement, the Supplier shall have no liability for failure to perform the Services or its other obligations under this Agreement if it is prevented, hindered or delayed in doing so as a result of any Relief Event.

## **18. FORCE MAJEURE**

- 18.1 The Supplier shall have no liability to the Client under this Agreement and the Client shall have no obligation to pay the Fees if the Supplier is prevented from, or delayed in, performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control except to the extent that the Supplier could

reasonably have avoided such circumstances by fulfilling its obligations in accordance with the terms of this Agreement or otherwise exercising the level of diligence that could reasonably have been expected of it (having exercised Good Industry Practice), including strikes, lock-outs or other industrial disputes (excluding any industrial disputes involving the workforce of the Supplier), act of God, war, riot, civil commotion, compliance with any law or regulation, fire, flood or storm (each a Force Majeure Event), provided that:

- (a) the Client is notified of such an event and its expected duration; and
- (b) the Supplier uses all reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event concerned,

and that if the period of delay or non-performance continues for four (4) weeks or more, the Party not affected may terminate this Agreement by giving fourteen (14) days' written notice to the other Party.

## **19. ANTI-BRIBERY**

19.1 The Supplier shall:

- (a) comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption, including the Bribery Act 2010 (**Relevant Requirements**);
- (b) promptly report to the Client any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement.

19.2 The Supplier shall ensure that any person associated with the Supplier who is performing services in connection with this Agreement does so only on the basis of a written contract that imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Clause 19 ("**Relevant Terms**"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Client for any breach by such persons of any of the Relevant Terms.

19.3 For the purposes of this Clause 19, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), section 6(5) and (6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 19 a person associated with the Supplier includes any subcontractor of the Supplier.

## **20. WAIVER**

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**21. SEVERANCE**

- 21.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 21.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original commercial intention.

**22. ENTIRE AGREEMENT AND AMENDMENT**

- 22.1 This Agreement along with the Service Specification constitutes the entire agreement between the Parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and Agreements between them relating to its subject matter.
- 22.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 22.3 Each Party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract.
- 22.4 No alteration to or variation of this Agreement shall take effect unless and until the same is in writing and signed on behalf of each of the Parties by a duly authorised representative.
- 22.5 Nothing in this Agreement shall exclude liability for fraud or fraudulent misrepresentation or warranties.

**23. ASSIGNMENT**

The Parties shall not, without the prior written consent of the other (which consent is not to be unreasonably withheld), assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.

**24. NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.

**25. THIRD-PARTY RIGHTS**

This Agreement is made for the benefit of the Parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit or be enforceable by anyone else.

**26. NOTICES**

26.1 Any notice or other communication required to be given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first class post or other next working day delivery service, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other Party's main fax number.

26.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt, or if sent by fax, at 9.00 am on the next Business Day after successful transmission, or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

26.3 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this Clause, "writing" shall include e-mail.

**27. DISPUTE RESOLUTION**

27.1 If a dispute arises under this Agreement ("**Dispute**"), including any Dispute arising out of any amount due to a Party hereto, then before bringing any suit, action or proceeding in connection with such Dispute, a Party must first give written notice of the Dispute to the other Party describing the Dispute and requesting that it is resolved under this dispute resolution process ("**Dispute Notice**").

27.2 If the Parties are unable to resolve the Dispute within thirty (30) calendar days of delivery of the Dispute Notice, then each Party will promptly (but no later than five Business Days thereafter):

(a) appoint a designated representative who has sufficient authority to settle the Dispute and who is at a higher management level than the person with direct responsibility for the administration of this Agreement ("**Designated Representative**"); and

(b) notify the other Party in writing of the name and contact information of such Designated Representative.

27.3 The Designated Representatives will then meet as often as they deem necessary in their reasonable judgment to discuss the Dispute and negotiate in good faith to resolve the Dispute. The Designated Representatives will mutually determine the format for such discussions and



negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one Party to the other Party will be honoured.

- 27.4 If the Parties are unable to resolve the Dispute within thirty (30) calendar days after the appointment of both Designated Representatives, then either Party may proceed with any other available remedy.

**28. GOVERNING LAW AND JURISDICTION**

- 28.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be exclusively governed by and construed in accordance with the law of England.
- 28.2 The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).