

## TERMS AND CONDITIONS FOR THE SUPPLY OF PROFESSIONAL SERVICES

### 1. Interpretation

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

#### 1.1 Definitions:

**ADR Notice:** has the meaning set out in clause 11.12(d).

**Applicable Data Protection Laws:** means (a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; and (b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

**Applicable Laws:** all applicable law, statutes, regulations and codes from time to time in force.

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

**Change Order:** has the meaning given in clause 11.5(a).

**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 11.5(e).

**Contract:** the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

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

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

**Customer Personal Data:** any personal data which the Supplier processes in connection with the Contract, in the capacity of a processor on behalf of the Customer.

**Deliverables:** the deliverables produced by the Supplier for the Customer.

**Dispute:** has the meaning set out in clause 11.12(a).

**Dispute Notice:** has the meaning set out in clause 11.12(b).

**EU GDPR:** means the General Data Protection Regulation ((EU) 2016/679), as it has effect in European Union law.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, 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.

**Privacy Policy:** has the meaning set out in clause 7.4.

**Purpose:** has the meaning set out in clause 7.7(a).

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Statement of Work.

**Statement of Work:** the description or specification of the Services and related matters provided in writing by the Supplier to the Customer and thereafter accepted by the Customer by way of the Customer's order for Services.

**Supplier:** Technimove Limited registered in England and Wales with company number 03499330.

**Supplier Materials:** has the meaning set out in clause 4.1(g).

**Supplier Personal Data:** any personal data that the Supplier processes in connection with the Contract, in the capacity of a controller.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**VAT:** has the meaning set out in clause 5.5.

## 1.2 Interpretation:

- (a) A reference to legislation or a legislative provision:
  - (i) is a reference to it as amended, extended or re-

enacted from time to time;  
and

- (ii) shall include all subordinate legislation made from time to time under that legislation or legislative 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 fax and email.

## 2. Basis of contract

**2.1** The Statement of Work, once accepted by the Customer, constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

**2.2** The Statement of Work shall only be deemed to be accepted when the Supplier commences the supply of Services in respect of it, at which point and on which date the Contract shall come into existence (**Commencement Date**).

**2.3** Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, 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.

**2.4** 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.

**2.5** Any Statement of Work 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 unless otherwise extended by the Supplier.

### **3. Supply of Services**

**3.1** The Supplier shall supply the Services to the Customer in accordance with the Statement of Work in all material respects.

**3.2** The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Statement of Work or otherwise specified in written communications between the parties, 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 Statement of Work 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 reasonable care and skill.

### **4. Customer's obligations**

**4.1** The Customer shall:

- (a) ensure that the terms of the Statement of Work are complete and accurate;

- (b) co-operate with the Supplier in all matters relating to the Services;

- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;

- (d) 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;

- (e) prepare the Customer's premises for the supply of the Services;

- (f) 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;

- (g) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and

- (h) comply with any additional obligations as set out in the Statement of Work.

**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; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 5. Charges and payment

**5.1** Unless the Charges are set out on a fixed price or other basis in the Statement of Work, the Charges for the Services shall be calculated on a time and materials basis and as follows:

- (a) the Charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in its current

price list at the date of the Contract notified to the Customer;

- (b) the Supplier's daily fee rates for each individual are calculated on the basis of an [eight-hour day worked between 8.00 am to 5.00 pm] on Business Days;
- (c) 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 5.1(b); on Business Days, Saturdays and public holidays and 200% 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 5.1(b) on Sundays; and
- (d) 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.

**5.2** Where applicable, 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 in the preceding 12-month period and the first

such increase shall take effect no earlier than the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.

**5.3** The Supplier shall be permitted to invoice the Customer either on completion of the Services or weekly or monthly in arrears. In the event that the Customer disputes any invoice raised by the Supplier, whether in whole or in part, the Supplier must be notified in writing within 14 days from the date of the invoice, after which the Customer shall be deemed to have accepted the invoice and shall not be entitled to dispute the invoice and any Charges under it.

**5.4** The Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
- (b) 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.

**5.5** 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**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

**5.6** 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 5.6 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%.

**5.7** 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).

**5.8** Should the Supplier be required to enforce the provisions of these Conditions against the Customer to recover any Charges then the Customer shall indemnify the Supplier against all costs and expenses (including professional and legal costs and expenses on a full indemnity basis) suffered or incurred by the Supplier arising out of or in connection with the Supplier enforcing the provisions of these Conditions.

## **6. Intellectual property rights**

**6.1** All Intellectual Property Rights in or arising out of or in connection with the Services (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 and modify 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 Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.

**6.4** 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.

## **7. Data protection**

**7.1** For the purposes of this clause 7, the terms **controller, processor, data subject, personal data, personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.

**7.2** Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.

**7.3** The parties have determined that, for the purposes of Applicable Data Protection Laws:

- (a) the Supplier may process personal data as processor on behalf of the Customer in fulfilling the Statement of Work; and
- (b) the Supplier may act as controller of personal data in fulfilling the Statement of Work.

**7.4** The Customer consents to (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all

actions taken by the Supplier in connection with the processing of Supplier Personal Data, provided these are in compliance with the then-current version of the Supplier's privacy policy available at [www.technimove.com](http://www.technimove.com) (**Privacy Policy**). In the event of any inconsistency or conflict between the terms of the Privacy Policy and the Contract, the Privacy Policy will take precedence.

**7.5** Without prejudice to the generality of clause 7.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Supplier Personal Data and Customer Personal Data to the Supplier and lawful collection of the same by the Supplier for the duration and purposes of the Contract.

**7.6** In relation to the Customer Personal Data, the scope, nature and purpose of processing by the Supplier shall be for the fulfilment of the Statement of Work, as shall the duration of the processing, with the types of personal data and categories of data subject being dictated by the Statement of Work.

**7.7** Without prejudice to the generality of clause 7.2, the Supplier shall, in relation to Customer Personal Data:

- (a) process that Customer Personal Data only on the documented instructions of the Customer, which shall be to process the Customer Personal Data for the purposes of fulfilling the Statement of Work unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data (**Purpose**). Where the Supplier is relying on Applicable Laws as the basis for processing Customer Processor Data, the Supplier shall

notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer on important grounds of public interest. The Supplier shall inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Laws;

- (b) implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which are 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 any personnel engaged and authorised by the Supplier to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- (d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Customer's cost and written request, in

responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- (e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
- (f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Contract unless the Supplier is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this clause 7.7(f) Customer Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
- (g) maintain records to demonstrate its compliance with this clause 7.

**7.8** The Customer provides its prior, general authorisation for the Supplier to:

- (a) appoint processors to process the Customer Personal Data, provided that the Supplier:
  - (i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on

- the Supplier in this clause 7;
- (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
  - (iii) shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection; and
- (b) transfer Customer Personal Data outside of the United Kingdom as required for the Purpose, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any

reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the European Union Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).

**7.9** Either party may, at any time on not less than 30 days' notice, revise this clause 7 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

**7.10** The Supplier's liability for losses arising from breaches of this clause 7 is as set out in clause 8.5.

## **8. Limitation of liability**

**8.1** The limits and exclusions in this clause reflect the Supplier's terms and business and formed the basis for setting the level of Charges. The Customer is responsible for making its own arrangements for the insurance of any excess loss or to otherwise mitigate its exposure to loss (for example, and without limitation, by backing-up data and information).

**8.2** 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.

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

**8.4** 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).

**8.5** Subject to clause 8.4, the Supplier's total liability to the Customer for all loss or damage shall not exceed the Charges.

**8.6** Subject to clause 8.4 and clause 8.5, this clause 8.6 sets out the types of loss that are wholly excluded:

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

**8.7** 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, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

**8.8** Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall

have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

**8.9** This clause 8 shall survive termination or expiry of the Contract.

## **9. Termination**

**9.1** The Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with these Conditions or the Statement of Work, until the Statement of Work has been completed.

**9.2** Subject to any provisions in the Statement of Work regarding the term of the Contract, without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 1 months' written notice.

**9.3** 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 14 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or

arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (c) 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
- (d) 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.

**9.4** 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 the Customer fails to pay any amount due under the Contract on the due date for payment.

**9.5** 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 9.3(c) or clause 9.3(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them; and
- (c) the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 9.3(b).

## **10. Consequences of termination**

### **10.1** On termination or expiry 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; and
- (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 or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach

of the Contract which existed at or before the date of termination or expiry.

**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 or expiry of the Contract shall remain in full force and effect.

## **11. General**

**11.1 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 results from events, circumstances or causes beyond its reasonable control.

### **11.2 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.

### **11.3 Confidentiality.**

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of 2 years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs,

customers, clients or suppliers of the other party, except as permitted by clause 11.3(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 11.3; 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.

### **11.4 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 or negligent misstatement based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

#### 11.5 Change control and variation.

- (a) Without prejudice to clause 3.3, either party may propose changes to the scope or execution of the Statement of Work but no proposed changes shall come into effect until a relevant **Change Order** has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on the terms of the Statement of Work.
- (b) If the Supplier wishes to make a change to the Statement of Work it shall provide a draft Change Order to the Customer.
- (c) If the Customer wishes to make a change to the Statement of Work it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed

changes. The Supplier shall then, as soon as reasonably practicable after receiving this information, provide a draft Change Order to the Customer.

- (d) If the parties agree to a Change Order, they shall sign it and that Change Order shall amend the Statement of Work. If, in the alternative, the parties are unable to agree a Change Order, either party may request that the disagreement is dealt with in accordance with clause 11.12.
- (e) Except as set out in these Conditions, no variation of the Contract or the Statement of Work shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**11.6 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.

**11.7 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 the Contract. If any provision or part-provision of the Contract is deleted under this clause 11.7 the parties shall

negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### 11.8 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 fax to its main fax number or sent by email to the address specified in the Statement of Work.
- (b) Any notice or communication 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 second Business Day after posting; or
  - (iii) if sent by fax or 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 11.8(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 11.8 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.

#### 11.9 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.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

#### 11.10 Non-solicitation.

- (a) The Customer shall not, without the prior written consent of the Supplier, at any time from the Commencement Date to the expiry of 6 months after the termination or expiry of the Contract, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.
- (b) Any consent by the Supplier in accordance with clause 11.10(a) shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid

by the Customer to that employee, consultant or subcontractor.

**11.11 Conflict.** If there is an inconsistency between any of the provisions of these Conditions and the Statement of Work, the provisions of the Statement of Work shall prevail.

**11.12 Dispute resolution.**

- (a) If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in these Conditions the parties shall follow the procedure set out in this clause 11.12.
- (b) Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, those employees of the Customer and the Supplier with day-to-day management of the Contract shall attempt in good faith to resolve the Dispute.
- (c) If the employees described in clause 11.12(b) are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the managing directors of the Customer and the Supplier who shall attempt in good faith to resolve it.
- (d) If the managing directors described in clause 11.12(c) are for any reason unable to resolve the Dispute within 30 days of it being referred to them,

the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR Notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR Notice should be sent to CEDR.

- (e) The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 11.14 which clause shall apply at all times.
- (f) If the Dispute is not resolved within 60 days after service of the ADR Notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 60 days, or the mediation terminates before the expiration of the said period of 60 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 11.14.

**11.13 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.

**11.14 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.