Template 22/3/18 - services agreement

Contents

[1 Definitions and interpretation 4](#_Toc509313864)

[2 Supply of Services 6](#_Toc509313865)

[3 Performance of the Services 6](#_Toc509313866)

[4 Warranties 7](#_Toc509313867)

[5 Price 8](#_Toc509313868)

[6 Payment 8](#_Toc509313869)

[7 Insurance 8](#_Toc509313870)

[8 Intellectual Property Rights 8](#_Toc509313871)

[9 Indemnity 8](#_Toc509313872)

[10 Termination 9](#_Toc509313873)

[11 Confidential information and Data Protection 10](#_Toc509313874)

[12 Anti-bribery 11](#_Toc509313875)

[13 Modern slavery 11](#_Toc509313876)

[14 Dispute resolution 12](#_Toc509313877)

[15 Entire agreement 12](#_Toc509313878)

[16 Notices 13](#_Toc509313879)

[17 Announcements 13](#_Toc509313880)

[18 Force majeure 13](#_Toc509313881)

[19 Further assurance 14](#_Toc509313882)

[20 Variation 14](#_Toc509313883)

[21 Assignment and subcontracting 14](#_Toc509313884)

[22 No partnership or agency 14](#_Toc509313885)

[23 Severance 14](#_Toc509313886)

[24 Waiver 14](#_Toc509313887)

[25 Compliance with law 15](#_Toc509313888)

[26 Conflicts within agreement 15](#_Toc509313889)

[27 Costs and expenses 15](#_Toc509313890)

[28 Third party rights 15](#_Toc509313891)

[29 Governing law 15](#_Toc509313892)

[30 Jurisdiction 15](#_Toc509313893)

[Schedule 1 Services 16](#_Toc509313894)

[Schedule 2 Price list 17](#_Toc509313895)

[Schedule 3 data protection 18](#_Toc509313896)

This Agreement is dated 20[xx]

Parties

1. [insert name of organisation]. Whose registered office is at [insert address] (registered with company number [insert company number or registered charity number if applicable] ([insert name of organisation]); and
2. [insert name of Supplier] **[**of OR a company incorporated in [England and Wales] under number [insert registered number] whose registered office is at**]** [insert address] (Supplier) (each of the Supplier and the [insert name of organisation (1)]being a **party** and together the Supplier and the [insert name of organisation] are the **parties**).

Background

1. The [insert name of organisation] is a [insert description of organisation and the main objective of the organisation].
2. The Supplier conducts the business of supplying [insert description of Services].
3. The parties have agreed that the Supplier shall supply certain services to the [insert name of organisation] on the terms set out in the agreement below.

AGREEMENT

1. Definitions and interpretation
   1. In this Agreement:

|  |  |
| --- | --- |
| Affiliate | 1. means any entity that directly or indirectly **Controls**, is **Controlled** by, or is under common **Control** with, another entity; |
| Agreement | 1. this supply of services agreement made between the parties; |
| Bribery Laws | 1. means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable United Kingdom laws, legislation, statutory instruments and regulations in relation to bribery or corruption; |
| Business Day | 1. means a day other than a Saturday, Sunday or bank or public holiday in England and Wales; |
| Commencement Date | 1. means **[**the date of this Agreement OR [insert date]**]**; |
| Confidential Information | 1. has the meaning given in clause 11.1; |
| Control | 1. means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and Controls and **Controlled** shall be interpreted; |
| Data Protection Law | means such laws, codes of practice and regulatory guidance relating to the privacy, use and/or processing of personal data as may be applicable to a party from time to time, including in the United Kingdom:   * + - 1. until such time as it is replaced by the General Data Protection Regulation (EC) 2016/679 (“**GDPR**”), the Data Protection Act 1998;       2. subject to (c) below, from 25th May 2018, the GDPR; and       3. such national legislation or subordinate legislation as may, in due course replace, re-enact, amend and/or supplement the GDPR; |
| Deliverables | 1. means the deliverables (if any) ancillary to the supply of the Services and described in the Specification; |
| Force Majeure | 1. has the meaning given in clause 18.1; |
| Good Industry Practice | 1. means the exercise of that degree of professionalism, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or company engaged in the same type of activity under the same or similar circumstances; |
| Intellectual Property Rights | 1. means copyright, patents, rights in inventions, rights in confidential information, Know-how, trade secrets, trade marks, service marks, trade names, design rights, rights in get-up, database rights, rights in data, semi-conductor chip topography rights, mask works, utility models, domain names, rights in computer software and all similar rights of whatever nature and, in each case: (i) whether registered or not, (ii) including any applications to protect or register such rights, (iii) including all renewals and extensions of such rights or applications, (iv) whether vested, contingent or future and (v) wherever existing; |
| Know-how | 1. means inventions, discoveries, improvements, processes, formulae, techniques, specifications, technical information, methods, tests, reports, component lists, manuals, instructions, drawings and information relating to [insert name of organisation] and suppliers (whether written or in any other form and whether confidential or not); |
| Modern Slavery Policy | 1. means the [insert name of organisation] anti-slavery and human trafficking policy as set out in Schedule 2 as updated by the [insert name of organisation] and notified to the Supplier from time to time; |
| Performance | 1. means the time at which the[insert name of organisation] deems that performance of the Services has taken place as provided in clause 3.4, and Perform and similar expressions shall be construed accordingly; 3.4 |
| Performance Location | 1. means the location set out in Schedule 1 to which the Supplier shall supply or procure the supply of, the Services or at some alternative premises as may be notified by the [insert name of organisation] (acting reasonably) to the Supplier in writing from time to time; |
| Price | 1. means the price of any of the Services determined under clause 5; |
| **Processing Instructions** | 1. the processing instructions set out in writing by the [insert name of organisation] from time to time, and any additional processing instructions set out in Part II of Schedule 3; |
| **Processing Period** | 1. the period specified in Part II of Schedule 3, during which the Supplier shall carry out the Specified Processing; |
| **Protected Data** | 1. means the types of personal data described in Part II of Schedule 3 in respect of the categories of Data Subjects also described in that Schedule, which the [insert name of organisation] (or any person on behalf of the [insert name of organisation] ) makes available to or shares with the Supplier in connection with or for the purposes of this Agreement; |
| Representatives | 1. has the meaning given in clause 11.2.1; |
| Services | 1. means, the services listed in Schedule 1 together with the Deliverables; |
| Specification | 1. means the description of the Services set out in Schedule 1; |
| **Specified Processing** | 1. the processing described in Part II of Schedule 3 (as may be varied by the written agreement of the parties from time to time), to be undertaken by the Supplier in respect of the Protected Data; |
| Tender Submission | 1. the tender (if any) submitted by the Supplier to the [insert name of organisation] in response to any invitation to tender; |
| Term | 1. has the meaning given in clause 2.1; |
| VAT | 1. means value added tax, as defined by the Value Added Tax Act 1994; and |
| Warranty Period | 1. means the period during which Performance takes place and the period of [insert figure, eg, 3 months] from Performance. |

* 1. In this Agreement:
     1. a reference to this Agreement includes its schedules, appendices and annexes (if any);
     2. a reference to a ‘party’ includes that party’s personal representatives, successors and permitted assigns;
     3. a reference to a ‘person’ includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns;
     4. a reference to a gender includes each other gender;
     5. words in the singular include the plural and vice versa;
     6. any words that follow 'include', 'includes', 'including', ‘in particular’ or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
     7. the table of contents, background section and any clause, schedule or other headings in this Agreement are included for convenience only and shall have no effect on the interpretation of this Agreement;
     8. a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time; and
     9. Unless explicitly provided otherwise a reference to a clause or Schedule is a reference to a clause or schedule of this Agreement and a reference to a paragraph is a reference to a paragraph of a Schedule.

1. Supply of Services
   1. This Agreement commences on the Commencement Date and shall continue until the Services have been Performed or [insert date], whichever is the **[**earlier OR latter**]**, when it shall terminate automatically, unless terminated earlier under clause 3.3.1, clause 10 or clause 18.3 (the **Term**).
   2. During the Term, the Supplier agrees to supply, and the [insert name of organisation] agrees to purchase, the Services on the terms set out in this Agreement.
2. Performance of the Services
   1. The Services shall, if required by the [insert name of organisation], be performed by the Supplier at the Performance Location as detailed in the Specification.
   2. The Supplier shall provide [insert name of organisation] with a completion note upon completion of the Services stating:
      1. the categories, type and quantity of Services supplied; and
      2. any additional information reasonably requested by the [insert name of organisation].
   3. Time of Performance shall be in accordance with the Specification. Subject to clause 3.5, if the Supplier fails to supply the Services or make resources available for Performance as set out in the Specification, the [insert name of organisation] may:
      1. refuse to accept any subsequent attempts to supply the Services and terminate this Agreement immediately by serving notice in writing on the Supplier to this effect;
      2. procure similar Services from an alternative supplier; and
      3. recover from the Supplier all losses, damages, costs and expenses incurred by the [insert name of organisation] arising from the Supplier’s default.
   4. The Services shall be deemed to have been Performed by the Supplier when the [insert name of organisation] is satisfied that the Services have been supplied by the Supplier fully in accordance with the terms of this Agreement.
   5. The Supplier shall not be liable for any delay in or failure of Performance to the extent it is caused by:
      1. the [insert name of organisation] failure to make the Performance Location available as required for Performance and supply of the Services; or
      2. an event of Force Majeure.
3. Warranties
   1. The Supplier warrants that the Services performed by the Supplier and any Deliverables supplied shall:
      1. conform in all material respects to the Tender Submission (if any) and Specification;
      2. be free from material defects for the Warranty Period;
      3. comply with all applicable laws and standards;
      4. be performed and supplied in accordance with Good Industry Practice; and
      5. be fit for purpose.
   2. Without limiting any other remedies to which it may be entitled, the [insert name of organisation] may reject any Services that do not comply with clause 4.1 and the Supplier shall, at the [insert name of organisation] option, promptly remedy, re-perform or refund the Price of any such Services provided that the [insert name of organisation] serves a written notice on Supplier within the Warranty Period that some or all of the Services do not comply with clause 4.1, identifying in sufficient detail the nature and extent of the defects.
   3. The provisions of this Agreement shall apply in addition to any Services and Deliverables that are remedied or re-performed with effect from Performance of the re-performed or replaced Services or the redelivery of any Deliverables (as appropriate).
   4. The Supplier shall not be liable for any failure of the Services to comply with clause 4.1:
      1. where such failure arises because of the [insert name of organisation] wilful damage or negligence; or
      2. to the extent caused by the Supplier following any design, specification or requirement of the [insert name of organisation] in relation to the Services.
   5. The Supplier shall comply with all applicable laws, standards and Good Industry Practice in the supply and Performance of the Services.
   6. The [insert name of organisation] rights under this Agreement are in addition to, and do not exclude or modify, the rights and conditions contained in sections 12 to 16 of the Supply of Goods and Services Act 1982.
4. Price
   1. The Prices payable by the[insert name of organisation] in respect of the Services are contained in Schedule 2.
   2. The Prices are exclusive of VAT
   3. The Prices include any costs, expenses or disbursements to be incurred by the Supplier unless explicitly agreed to by the [insert name of organisation] in advance in writing.
5. Payment
   1. The Supplier shall issue its invoice for the Services [as set out in Schedule 2 OR within [20] Business Days after Performance].
   2. The [insert name of organisation] shall pay all undisputed valid VAT invoices:
      1. in full in cleared funds within [insert days] of receipt of each invoice; and
      2. to the bank account nominated by the Supplier.
   3. Time of payment is not of the essence.
6. Insurance
   1. The Supplier shall put in place and maintain the following insurance with a reputable insurer for the duration of this Agreement and for seven years after its termination or expiry:
      1. public liability insurance for not less than £[insert amount] in respect of each claim; and
      2. professional indemnity insurance for not less than £[insert amount] in respect of each claim.
   2. On each policy renewal (including where any modifications are made to any policy) and otherwise at the [insert name of organisation] request, the Supplier shall provide the [insert name of organisation] with details of the insurance including the risks covered, indemnity limits and premiums paid and copies of the certificates of insurance.
   3. The Supplier undertakes that it shall not do or omit to do anything which might invalidate or adversely affect the insurance that the Supplier is obliged to maintain under clause 7.1.
   4. The Supplier shall notify the [insert name of organisation] immediately if anything occurs which has invalidated, or is likely to invalidate, the insurance held by the Supplier.
7. Intellectual Property Rights
   1. Save as expressly reserved in the Specification (and subject to clause 8.3) the Supplier assigns to the [insert name of organisation] absolutely with full title guarantee all the Intellectual Property Rights in the Services and Deliverables and all other materials created by the Supplier pursuant to this Agreement.
   2. Except as expressly agreed above, no Intellectual Property Rights of either party are transferred or licensed as a result of this Agreement.
   3. Subject to the foregoing, each party shall be entitled to use in any way it deems fit any skills, techniques or know-how acquired or developed or used in connection with this Agreement provided always that such skills, techniques or know-how do not infringe the other party’s Intellectual Property Rights now or in the future or disclose or breach the confidentiality of the other party’s Confidential Information.
8. Indemnity
   1. The Supplier shall indemnify the [insert name of organisation] for any losses, damages, liability, costs and expenses (including professional fees) incurred by it as a result of any action, demand or claim:
      1. that the provision of the Services or Deliverables infringes the Intellectual Property Rights of any third party (an IPR Claim);
      2. that the[insert name of organisation] is in breach of any applicable laws as a result of any act or omission of the Supplier;
      3. made against the [insert name of organisation] by a third party arising from any defect in the Deliverables caused by the Supplier’s breach of this Agreement,

each being a **Claim**.

* 1. In the event that the [insert name of organisation] receives notice of any Claim, it shall:
     1. notify the Supplier in writing as soon as reasonably practicable;
     2. not make any admission of liability or agree any settlement or compromise of the Claim without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed);
     3. let the Supplier at its request and own expense have the conduct of or settle all negotiations and litigation arising from the Claim at its sole discretion provided that if the Supplier fails to conduct the Claim in a timely or proper manner the [insert name of organisation] may conduct the Claim at the expense of the Supplier;
     4. take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the Claim; and
     5. provide the Supplier with all reasonable assistance in relation to the Claim (at the [insert name of organisation] expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the [insert name of organisation].
  2. Without prejudice to clause 9.1, if any IPR Claim is made or is reasonably likely to be made, the Supplier may at its option:
     1. procure for the [insert name of organisation] the right to continue using and possessing the relevant Deliverables; or
     2. modify or replace the infringing part of the Deliverables so as to avoid the infringement or alleged infringement, provided the Deliverables remain in conformance to the Specification.

1. Termination
   1. Either party may terminate this Agreement at any time by giving notice in writing to the other party if:
      1. the other party commits a material breach of this Agreement and such breach is not remediable;
      2. the other party commits a material breach of this Agreement which is not remedied within [14] days of receiving written notice of such breach;
      3. any consent, licence or authorisation held by the other party is revoked or modified such that the other party is no longer able to comply with its obligations under this Agreement or receive any benefit to which it is entitled.
   2. Either party may terminate this Agreement at any time by giving notice in writing to the other party if that other party:
      1. stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
      2. is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the non-defaulting party reasonably believes that to be the case;
      3. becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
      4. has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
      5. has a resolution passed for its winding up;
      6. has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
      7. is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within fourteen days of that procedure being commenced;
      8. has a freezing order made against it; or
      9. is subject to any events or circumstances analogous to those in clauses 10.2.1 to 10.2.9 in any jurisdiction.
   3. The right of a party to terminate the Agreement pursuant to clause 10.2 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to this Agreement.
   4. The [insert name of organisation] may acting reasonably terminate this Agreement at any time by giving not less than 30 days’ notice in writing to the Supplier if the Supplier undergoes a change of Control
   5. On termination of this Agreement for any reason:
      1. the Supplier shall promptly invoice the [insert name of organisation] for all Services performed but not yet invoiced;
      2. the parties shall within five Business Days return any materials of the other party then in its possession or control; and
      3. the accrued rights and liabilities of the parties (including any rights in relation to breaches of contract) shall not be affected.
   6. The following clauses of this Agreement shall survive termination, howsoever caused:
      1. clause 4 (warranty);
      2. clause 7 (insurance);
      3. clause 9 (indemnity);
      4. clause 10.5 (consequence of termination);
      5. clause 11 (confidential information);
      6. clause 14 (dispute resolution);
      7. clause 16 (notices);
      8. clause 28 (third party rights); and
      9. clause 29 and 30 (governing law and jurisdiction);

together with any other provision of this Agreement which expressly or by implication is intended to survive termination.

1. Confidential information and Data Protection
   1. Each party undertakes that it shall keep any information that is confidential in nature concerning the other party and its Affiliates including, any details of its business, affairs, [insert name of organisation], clients, suppliers, plans or strategy (Confidential Information) confidential and that it shall not use or disclose the other party's Confidential Information to any person, except as permitted by clause 11.2, during the Term and for a period of three years after expiry or termination of this Agreement.
   2. A party may:
      1. disclose any Confidential Information to any of its employees, officers, representatives or advisers (Representatives) who need to know the relevant Confidential Information for the purposes of the performance of any obligations under this Agreement, provided that such party must ensure that each of its Representative to whom Confidential Information is disclosed is aware of its confidential nature and agrees to comply with this clause 11 as if it were a party;
      2. disclose any Confidential Information as may be required by law, any court, any governmental, regulatory or supervisory authority (including any securities exchange) or any other authority of competent jurisdiction to be disclosed; and
      3. use Confidential Information only to perform any obligations under this Agreement.
   3. Each party recognises that any breach or threatened breach of this clause 11 may cause irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages, the parties agree that the non-defaulting party may be entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.
   4. The provisions of Schedule 3 (Data Protection) shall apply in respect of this Agreement.
2. Anti-bribery
   1. For the purposes of this clause 12 the expressions ‘adequate procedures’ and ‘associated with' shall be construed in accordance with the Bribery Act 2010 and guidance published under it. The Supplier shall ensure that it and each person referred to in this clause 12.1 does not, by any act or omission, place the [insert name of organisation] in breach of any Bribery Laws. The Supplier shall comply with all applicable Bribery Laws in connection with this Agreement, ensure that it has in place adequate procedures to prevent any breach of this clause 12 and ensure that all of the Supplier’s personnel and all direct subcontractors, suppliers and agents of the Supplier involved in performing **the S**ervices for or on behalf of the Supplier so comply.
   2. Without limitation to clause 12.1, the Supplier shall not **i**n connection with this Agreement make or receive any bribe (which term shall be construed in accordance with the Bribery Act 2010) or other improper payment or advantage, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and will implement and maintain adequate procedures to ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.
   3. The Supplier shall immediately notify the[insert name of organisation] as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 12.
   4. Any breach of this clause 12 by the Supplier shall be deemed a material breach of this Agreement that is not remediable and entitle the [insert name of organisation] to immediately terminate this Agreement by notice under clause 10.
3. Modern slavery
   1. The Supplier undertakes, warrants and represents that:
      1. neither the Supplier nor any of its officers, employees, agents or subcontractors has:
         1. committed an offence under the Modern Slavery Act 2015 (an **MSA Offence**); or
         2. been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
         3. is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; and
      2. it shall comply with the Modern Slavery Act 2015.
   2. Any breach of clause 13.1 by the Supplier shall be deemed a material breach of the agreement and shall entitle the [insert name of organisation] to terminate this agreement**.**
4. Dispute resolution
   1. Any dispute arising between the parties out of or in connection with this Agreement shall be dealt with in accordance with the provisions of this clause 14.
   2. The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
   3. The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
      1. Within fourteen days of service of the notice, the duly authorised representatives of the parties shall meet to discuss the dispute and attempt to resolve it.
      2. If the dispute has not been resolved within fourteen days of the first meeting of the duly authorised representatives then the matter shall be referred to the chief executives (or persons of equivalent seniority). The chief executives (or equivalent) shall meet within fourteen days to discuss the dispute and attempt to resolve it.
   4. The specific format for the resolution of the dispute under clause 14.3.1 and, if necessary, clause 14.3.2 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.
   5. If the dispute has not been resolved within fourteen days of the first meeting of the chief executives (or equivalent) under clause 14.3.2 then the matter may be referred to mediation in accordance with 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, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than twenty-one days after the date of the ADR notice.
   6. Either party may issue formal legal proceedings or commence arbitration at any time whether or not the steps referred to in clause 14.3 and 14.5 have been completed.
5. Entire agreement
   1. **This Agreement** constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
   2. **Save in respect of the** [insert name of organisation]  **which has relied on the Tender Submission (and any supporting documents)** each party acknowledges that it has not entered into this Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement.
   3. Nothing in this Agreement purports to limit or exclude any liability for fraud.
6. Notices
   1. Any notice given by a party under this Agreement shall be:
      1. signed by, or on behalf of, the party giving it **;**and
      2. sent to the relevant party at the address set out in clause 16.3.
   2. Notices may be given, and are deemed received:
      1. by hand: on receipt of a signature at the time of delivery;
      2. by [eg Royal Mail Recorded Signed For] post: at [9.00 am] on the [eg second] Business Day after posting;
      3. by **[**Royal Mail International Tracked & Signed OR Royal Mail International Signed**]** post: at [9.00 am] on the [eg fourth] Business Day after posting; and
      4. by fax: on receipt of a transmission report from the correct number confirming uninterrupted and error-free transmission**[**; and OR .**]**
      5. **[**by email: **[**provided confirmation is sent by [first class post] on receipt of a **[**delivery OR read receipt**]** email from the correct address**]]**.
   3. Notices **[**and other communications**]** shall be sent to:
      1. [insert name of [insert name of organisation]] **[**for the attention of [insert name and/or position]**]** at:

[insert address]

[insert fax number]

**[**[insert email address]**]**; and

**[**copied to [insert name] at [insert address]; and**]**

* + 1. [insert name of Supplier] **[**for the attention of [insert name and/or position]**]** at:

[insert address]

[insert fax number]

**[**[insert email address]**][**; and OR .**]**

**[**copied to [insert name] at [insert address].**]**

* 1. A notice given under this Agreement is not validly served if sent by email.

1. Announcements
   1. No announcement or other public disclosure concerning this Agreement or any of the matters contained in it shall be made by, or on behalf of, a party without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
2. Force majeure
   1. In this clause '**Force Majeure**' means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under this Agreement. Inability to pay is not Force Majeure.
   2. A party shall not be liable if delayed in or prevented from performing its obligations under this Agreement due to Force Majeure, provided that it:
      1. promptly notifies the other of the Force Majeure event and its expected duration; and
      2. uses reasonable endeavours to minimise the effects of that event.
   3. If, due to Force Majeure, a party:
      1. is unable to perform a material obligation; or
      2. is delayed in or prevented from performing its obligations for a continuous period of thirty days or more.

either party may terminate this Agreement on not less than fourteen days’ written notice.

1. Further assurance
   1. Each party shall at the request of the other, and at the cost of the requesting party, do all acts and execute all documents which are necessary to give full effect to this Agreement.
2. Variation
   1. No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party.
3. Assignment and subcontracting
   1. The[insert name of organisation] may at any time assign, subcontract, transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights under this Agreement, provided that it gives prior written notice to the Supplier.
   2. The Supplier shall not assign, subcontract, transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights under this Agreement, in whole or in part, without the [insert name of organisation] prior written consent.
4. No partnership or agency
   1. The parties are independent and are not partners or principal and agent and this Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. Neither party shall have, nor shall represent that it has, any authority to make any commitments on the other party’s behalf.
5. Severance
   1. If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.
   2. If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
6. Waiver
   1. No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
   2. No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.
   3. A waiver of any term, provision, condition or breach of this Agreement shall only be effective if given in writing and signed by the waiving party, and then only in the instance and for the purpose for which it is given.
7. Compliance with law
   1. Each party shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to them and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform their obligations under or in connection with this Agreement.
8. Conflicts within agreement
   1. If there is a conflict between the terms contained in the main body of this Agreement and the terms of the schedules, the terms of the main body of the Agreement shall prevail. If there is any conflict between the terms of the Specification and the Tender Submission the terms of the Specification shall prevail.
9. Costs and expenses
   1. Each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of this Agreement (and any documents referred to in it).
10. Third party rights
    1. A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Agreement.
11. Governing law
    1. This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales as applied in Wales.
12. Jurisdiction
    1. The parties irrevocably agree that the courts of England and Wales shall have non-exclusivejurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

Agreed by the parties on the date set out at the head of this agreement

|  |  |
| --- | --- |
| Signed by [insert full name of director/authorised signatory] | ................................. |
| for and on behalf of | **[**Director OR Authorised signatory**]** |
| [insert name of the Supplier] |  |

and

|  |  |
| --- | --- |
| Signed by [insert full name of director/authorised signatory] | ................................. |
| for and on behalf of | **[**Director OR Authorised signatory**]** |
| [[insert name of organisation]] |  |

1. Services

[Insert description of Services]

1. Price list

[Insert price list]

1. data protection

Part I – contractual requirements

1. Data Protection

* + - 1. In this Schedule, the terms “personal data”, “data controller”, “data processor”, “data subject”, “personal data breach”, “third country”, “international organisation”, “supervisory authority”, “adequacy decision” and “appropriate safeguards” shall have the meanings given to such terms (or any equivalent terms) under Data Protection Law.
      2. The provision of the Services by the Supplier includes the Specified Processing. The parties acknowledge that, in respect of the Specified Processing, shall be the data controller and the Supplier shall be the data processor.
      3. In performing their respective obligations in this Schedule, both parties will comply with all applicable requirements of Data Protection Law. This is in addition to, and does not relieve, remove or replace, a party’s direct obligations under Data Protection Law.
      4. Subject always to paragraph 1.5, the Supplier shall carry out the Specified Processing during the Processing Period and in accordance with the Processing Instructions. The Supplier shall not use the Protected Data for any purpose other than carrying out the Specified Processing.
      5. The Supplier may undertake such processing of the Protected Data as may be required from time to time by any law of the United Kingdom and/or the European Union (or any of its member states) PROVIDED ALWAYS that, where such a requirement applies, the Supplier shall (unless prohibited from doing so by the relevant law on important grounds of public interest) notify the [insert name of organisation] of the processing obligation prior to undertaking the processing in question.
      6. The Supplier shall in relation to the Specified Processing:
      7. ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of the Protected Data and against accidental loss or destruction of or damage to the Protected Data, such measures to be appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the Protected Data;
      8. ensure that access to the Protected Data is strictly limited to those of its personnel who require access to it for the purposes of carrying out the Specified Processing and that such personnel are subject to contractual obligations to keep the Protected Data confidential;
      9. not transfer any of the Protected Data to a third country or international organisation unless:
         1. the prior written consent of the [insert name of organisation] to the transfer has been obtained;
         2. the transfer in question either falls under the scope of an existing adequacy decision of the European Commission or will be adequately protected by appropriate safeguards put in place by either the [insert name of organisation] or the Supplier;
         3. the Supplier ensures an adequate level of protection to the Protected Data that is the subject of the transfer (as required by Data Protection Law); and
         4. the Supplier complies with any reasonable instructions notified to it in advance by the [insert name of organisation] in relation to the transfer;
      10. provide to the [insert name of organisation] without undue delay [and at the Supplier’s own cost], such reasonable assistance as the [insert name of organisation] may require from time to time in connection with:
          1. the fulfilment by the [insert name of organisation] of is obligations under Data Protection Law to respond to requests by data subjects to exercise their rights under such law;
          2. the [insert name of organisation] obligations under Data Protection Law relating to the security of processing, the notification of personal data breaches to relevant supervisory authorities, the communication of personal data breaches to data subjects and data protection impact assessments (including, in respect of the latter, any requirement to consult with supervisory authorities or regulators in connection therewith);
      11. on becoming aware of a personal data breach, notify the [insert name of organisation] (providing as much detail as reasonably possible) without undue delay, such notification to take place, in any event, within twelve (12) hours of the Supplier becoming aware of the personal data breach and thereafter provide to the [insert name of organisation] such additional information relating to the personal data breach as may reasonably be required by the [insert name of organisation] (within such timeframes as the [insert name of organisation] may specify);
      12. unless any applicable law of the European Union (or a member state thereof) or the United Kingdom requires the continued storage of the Protected Data (in which case the Supplier shall notify the [insert name of organisation] of such requirement), on termination (howsoever arising) or expiry of this Agreement, promptly delete the Protected Data or return it to the [insert name of organisation] (as shall be directed by the [insert name of organisation]) and delete all additional copies of the Protected Data; and
      13. for the purpose of demonstrating its compliance with this Schedule and Data Protection Law:
          1. maintain full and accurate records relating to its data processing activities and make such parts of such records as may relate to the Specified Processing available to the[insert name of organisation] on request; and
          2. permit the [insert name of organisation] (and/or the [insert name of organisation] designated auditors) to carry out such audits and inspections in connection with the Supplier’s obligations under this Schedule as the [insert name of organisation] may reasonably deem necessary from time to time (including providing or procuring such access as the [insert name of organisation] may reasonably require to any records, premises, equipment or personnel of the Supplier or any person acting on behalf of the Supplier).

1.8 The Supplier shall not appoint a third party to carry out any of its data processing obligations under this Agreement without the prior written consent of the[insert name of organisation] . In the event that the[insert name of organisation] gives its consent to the appointment of such a third party (an “Approved Processor”):

(a) the Supplier shall impose on such Approved Processor equivalent obligations to those set out in this Schedule; and

(b) the Supplier shall remain fully liable to the [insert name of organisation] for the performance of its obligations in this Schedule.

**Part II – Data processing details**

**Subject matter of the processing:**

[This should be a high level, short description of what the processing is about]

**Processing Period:**

[This should set out the duration of the processing]

**Nature and purpose of the processing:**

[Include all intended purposes (e.g. employment processing, fulfilment of statutory obligation]

[The nature of the processing means the type of operations that are going to be performed by the processor, for example, recording, storage, organisation, retrieval, consultation, dissemination)]

**Type of Personal Data:**

[For example, name and address, details of pay, NI number, date of birth]

**Categories of Data Subjects:**

[For example, employees, customers, students, members of the public]

**[Additional processing instructions]**

[For example, any specific security require]