

ProspectsPayroll

Terms and Conditions for Sales of Goods and Services



1. Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Affiliate	means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;
Bribery Laws	means the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent legislation in any other relevant applicable jurisdiction;
Business Day	means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;
Conditions	means the Supplier's terms and conditions of supply set out in this document;
Confidential	means any commercial, financial or technical information relating to the Services, plans, the Supplier's business arrangements, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;
Contract	means the agreement between the Supplier and the Customer for the supply and purchase of Services incorporating these Conditions and the Order;
Control	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;
Controller	shall have the meaning given to it in applicable Data Protection Laws from time to time;
Customer	means the person who purchases the Services from the Supplier and whose details are set out in the Order;
Data Protection Laws	means, as binding on either party or the Services: (a) the GDPR; (b) the Data Protection Act 2018; (c) any laws which implement any such laws; and (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;
Data Subject	shall have the meaning given to it in applicable Data Protection Laws from time to time;
Force Majeure	means an event or sequence of events beyond a party's

	reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including strikes or other industrial disputes involving the Supplier's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;
GDPR	means the General Data Protection Regulation, Regulation (EU) 2016/679;
Intellectual Property Rights	means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case: <ul style="list-style-type: none"> a) whether registered or not; b) including any applications to protect or register such rights; c) including all renewals and extensions of such rights or applications; d) whether vested, contingent or future; e) to which the relevant party is or may be entitled, and f) in whichever part of the world existing;
International Organisation	shall have the meaning given to it in applicable Data Protection Laws from time to time;
Location	means the address(es) for performance of the Services as set out in the Order;
Modern Slavery Policy Order	means the Supplier's anti-slavery and human trafficking policy in force and notified to the Customer from time to time; means the order for the Services from the Supplier placed by the Customer as defined in the Supplier's order form
Personal Data	shall have the meaning given to it in applicable Data Protection Laws from time to time;
Personal Data Breach	shall have the meaning given to it in applicable Data Protection Laws from time to time;
Price	has the meaning set out in clause 3.1;
Processing	has the meaning given to it in applicable Data Protection Laws from time to time (and related expressions, including process, processing, processed, and processes shall be construed accordingly);
Processor	shall have the meaning given to it in applicable Data Protection Laws from time to time;

Protected Data	means Personal Data received from or on behalf of the Customer in connection with the performance of the Supplier's obligations under the Contract;
Services	means the Services set out in the Order or understood by the parties to be included in the Services and to be performed by the Supplier for the Customer; Specification means the description or specification of the Services set out or referred to in the Order;
Sub-Processor	means any agent, sub-contractor or other third party (excluding its employees) engaged by the Supplier for carrying out any processing activities on behalf of the Customer in respect of the Protected Data;
Supplier	means HR Connect, a trading style of Commercial Service Kent Ltd registered under number 5858177, whose registered office is at 1 Abbey Wood Road, Kings Hill, West Malling, ME19 4YT
Supplier Personnel	means all employees, officers, staff, other workers, agents and consultants of the Supplier, its Affiliates and any of their sub-contractors who are engaged in the performance of the Services from time to time; and
VAT	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Services.

- 1.2 In these Conditions, unless the context requires otherwise:
- 1.2.1 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;
 - 1.2.2 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
 - 1.2.3 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;
 - 1.2.4 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
 - 1.2.5 a reference to a gender includes each other gender;
 - 1.2.6 words in the singular include the plural and vice versa;
 - 1.2.7 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;
 - 1.2.8 a reference to 'writing' or 'written' includes any method of reproducing

words in a legible and non-transitory form (excluding email);

- 1.2.9 a reference to legislation is a reference to that legislation as in force at the date of the Contract or amended, extended, re-enacted or consolidated from time to time; and
- 1.2.10 without prejudice to the provisions of clause 14, a reference to legislation includes all subordinate legislation made from time to time under that legislation.

2. Application of these Conditions

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing.
- 2.3 No variation of these Conditions or to an Order or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Supplier.
- 2.4 Each Order by the Customer to the Supplier shall be an offer to purchase Services subject to Conditions defined on the Supplier's order form.
- 2.5 If the Supplier is unable to accept an Order, it shall notify the Customer as soon as reasonably practicable.
- 2.6 The offer constituted by an Order shall remain in effect and be capable of being accepted by the Supplier for ten Business Days from the date on which the Customer submitted the Order, after which time it shall automatically lapse and be withdrawn.
- 2.7 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Services shall arise, until the earlier of:
 - 2.7.1 the Supplier's written acceptance of the Order; or
 - 2.7.2 the Supplier performing the Services or notifying the Customer that they are ready to be performed (as the case may be).
- 2.8 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.9 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply Services and are incapable of being accepted by the Customer.
- 2.10 Marketing and other promotional material relating to the Services are illustrative only and do not form part of the Contract.

3. Price

- 3.1 The price for the Services shall be as set out in the Order or, in default of such provision, shall be calculated in accordance with the Supplier's scale of charges in force from time to time as advised by the Supplier before the date the Order is made ("Price").
- 3.2 The Price shown is correct at the time of contract commencement. The Supplier has the right to review pricing on an annual basis.
- 3.3 All costs are related to the provision of services as defined within the Service Level Agreement (SLA). The conditions of which may be amended by the Supplier from time to time in line with Customer requested additions or as a requirement due to changes in the law. Any additional associated costs shall be charged by the Supplier to the Customer at standard rates.
All pricing shown is ex-VAT (or equivalent sales tax) and will be added where applicable.
- 3.4 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.
- 3.5 The Supplier may also increase Prices at any time by giving the Customer not less than 15 Business Days' notice in writing provided that the increase does not exceed 5% above RPI over the Prices in effect immediately prior to the increase.
- 3.6 Notwithstanding clause 3.5, the Supplier may increase the Prices with immediate effect by written notice to the Customer.
- 3.7 In relation clause 3.6, the Supplier undertakes to only increase prices where there is an increase in the direct cost to the Supplier exceeding 2% and which is due to factors beyond the control of the Supplier.

4. Payment

- 4.1 The Supplier shall invoice the Customer for the Services at any time.
- 4.2 The Customer shall pay all invoices:
 - 4.2.1 in full without deduction or set-off, in cleared funds within thirty days of the date of each invoice; and
 - 4.2.2 to the bank account nominated by the Supplier.
- 4.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:
 - 4.3.1 the Supplier may, without limiting its other rights, charge interest on such sums at 4 per cent a year above the base rate of Royal Bank of Scotland from time to time in force, and

- 4.3.2 interest shall accrue on a daily basis and apply from the due date for payment until actual payment in full, whether before or after judgment.
- 4.3.3 The Supplier has the right to suspend services with immediate effect following any non-compliance with Clause 4.2.1 Reinstatement of services will resume upon confirmation of funds arrival to the Suppliers nominated account.
- 4.3.4 Upon either party invoking the provisions of (section 17) due to Customer default related to Clause 4.2.1 the Supplier reserves the right to terminate the contract at any time for convenience provided a minimum 30 days notice in writing is provided to the Customer. At which point all outstanding undisputed debt is to be paid by the Customer within 5 days without set-off or deduction.

5. Credit limit

The Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.

6. Performance

- 6.1 An Order shall specify whether the Services are to be:
 - 6.1.1.1 performed at the Location on the date(s) specified in the Order; or
 - 6.1.1.2 performed at an alternative premises set out in the Order (as the case may be). The Customer shall make such premises available for the Supplier so that the Supplier is able to make the Services available to be performed within the period set out in the Order.
- 6.2 The Services shall be deemed performed on completion of the performance of the Services as specified in the Order.
- 6.3 The Supplier may perform the Services in instalments. Any delay in performance or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.4 Each performance of the Services shall be accompanied by a performance note stating:
 - 6.4.1 the date of the Order;
 - 6.4.2 the relevant Customer and Supplier details;
 - 6.4.3 the category, type and quantity of Services performed; and
 - 6.4.4 any special instructions.
- 6.5 Time of performance of the Services is not of the essence. The Supplier shall use its reasonable endeavours to meet estimated dates for performance, but any such dates are approximate only.
- 6.6 The Supplier shall not be liable for any delay in or failure of performance caused by:

- 6.6.1 the Customer's failure to: (i) make the Location available, (ii) prepare the Location in accordance with the Supplier's instructions or as required for performance of the Services or (iii) provide the Supplier with adequate instructions for performance or otherwise relating to the Services;
- 6.6.2 Force Majeure.

7. Warranty

- 7.1 The Supplier warrants that, for a period of three months from performance (the "Warranty Period"), the Services shall:
 - 7.1.1 conform in all material respects to their description and the Specification;
 - 7.1.2 be free from material defects;
 - 7.1.3 be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II s 13;
 - 7.1.4 be fit for purpose and any purpose held out by the Supplier and set out in the Order; and
 - 7.1.5 in the case of media on which the results of the Services are supplied, be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 7.2 The Customer warrants that it has provided the Supplier with all relevant, full and accurate information as to the Customer's business and needs.
- 7.3 The Supplier shall, at its option, remedy, re-perform or refund the Services that do not comply with clause 7.1, provided that:
 - 7.3.1 the Customer serves a written notice on the Supplier not later than five Business Days from performance in the case of defects discoverable by a physical inspection, or within a reasonable period of time from performance in the case of latent defects; and
 - 7.3.2 such notice specifies that some or all of the Services do not comply with clause 7.1 and identifies in sufficient detail the nature and extent of the defects; and
 - 7.3.3 the Customer gives the Supplier a reasonable opportunity to examine the claim of the defective Services.
- 7.4 The provisions of these Conditions shall apply to any Services that are remedied or re-performed with effect from performance of the remedied or re-performed Services.
- 7.5 Except as set out in this clause 7:
 - 7.5.1 the Supplier gives no warranties and makes no representations in relation to the Services; and

- 7.5.2 shall have no liability for their failure to comply with the warranty in clause 7.1, and all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 7.6 The Customer shall be entitled to exercise its rights under clause 7 notwithstanding that the Services were not rejected following any initial inspection.

8. Anti-bribery

- 8.1 For the purposes of this clause 8 the expressions 'adequate procedures' and 'associated with' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 8.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:
 - 8.2.1 all of that party's personnel;
 - 8.2.2 all others associated with that party; and
 - 8.2.3 all of that party's sub-contractors; involved in performing the Contract so comply.
- 8.3 Without limitation to clause 8.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 8.4 Each party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 8.

9. Anti-slavery

- 9.1.1 The Customer undertakes, warrants and represents that:
 - 9.1.1 neither the Customer nor any of its officers, employees, agents or subcontractors has:
 - (a) committed an offence under the Modern Slavery Act 2015 (an MSA Offence); or
 - (b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - (c) is aware 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;
 - 9.1.2 it shall comply with the Modern Slavery Act 2015 and the Supplier's Modern Slavery Policy; and

- 9.1.3 it shall notify the Supplier immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or sub-contractors have breached or potentially breached any of Customer's obligations under clause 9.1. Such notice shall set out full details of the circumstances concerning the breach or potential breach of the Customer's obligations.
- 9.2 Any breach of clause 9.1 by the Customer shall be deemed a material breach of the Contract and shall entitle the Supplier to terminate the Contract with immediate effect.

10 Indemnity and insurance

- 10.1 The Customer shall indemnify, and keep indemnified, the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier as a result of or in connection with the Customer's breach of any of the Customer's obligations under the Contract.
- 10.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under these Conditions. On request, the Customer shall supply, so far as is reasonable, evidence of the maintenance of the insurance and all of its terms from time to time applicable. The Customer shall on request assign to the Supplier the benefit of such insurance.

11 Limitation of liability

- 11.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 11.
- 11.2 Subject to clauses 11.5 and 11.6, the Supplier's total liability per incident, series of connected incidents and in the aggregate shall not exceed the sum of either:
 - 11.2.1 £10,000; or
 - 11.2.2 The price for those elements of the Goods or Services under this Contract for which payment has been made and received by Supplier.
- 11.3 Subject to clauses 11.5 and 11.6, the Supplier shall not be liable for consequential, indirect or special losses.
- 11.4 Subject to clauses 11.5 and 11.6, the Supplier shall not be liable for any of the following (whether direct or indirect):
 - 11.4.1 loss of profit;
 - 11.4.2 loss or corruption of data;
 - 11.4.3 loss of use;
 - 11.4.4 loss of production;
 - 11.4.5 loss of contract;

- 11.4.6 loss of opportunity;
 - 11.4.7 loss of savings, discount or rebate (whether actual or anticipated);
 - 11.4.8 cost of re-procurement;
 - 11.4.9 harm to reputation or loss of goodwill.
- 11.5 The limitations of liability set out in clauses 11.2.2 to 11.4 shall not apply in respect of any indemnities given by either party under the Contract.
- 11.6 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 11.6.1 death or personal injury caused by negligence;
 - 11.6.2 fraud or fraudulent misrepresentation;
 - 11.6.3 any other losses which cannot be excluded or limited by applicable law;
 - 11.6.4 any losses caused by wilful misconduct.

12 Intellectual property

- 12.1 The Supplier shall indemnify the Customer from and against any losses, damages, liability, costs and expenses (including reasonable and necessary professional fees) incurred by it as a result of any action, demand or claim that performance of benefit of the Services infringes the Intellectual Property Rights of any third party ("IPR Claim"), provided that the Supplier shall have no such liability if the Customer:
- 12.1.1 Uses such third party Intellectual Property Rights for purposes other than those reasonably contemplated by the parties when entering into this Contract;
 - 12.1.2 does not notify the Supplier in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible or when it should have reasonably become aware of the breach, whichever is applicable;
 - 12.1.3 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Supplier;
 - 12.1.4 does not let the Supplier at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;
 - 12.1.5 does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim;
 - 12.1.6 does not, at the Supplier's request, provide the Supplier with all reasonable assistance in relation to the IPR Claim (at the Customer's

expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Customer;

- 12.1.7 follow such other reasonable instructions as the Supplier may, from time to time give the Customer.
- 12.2 If any IPR Claim is made or is reasonably likely to be made, the Supplier may at its option:
 - 12.2.1 procure for the Customer the right to continue receiving the benefit of the relevant Services; or
 - 12.2.2 modify or replace the infringing part of the Services so as to avoid the infringement or alleged infringement, provided the Services remain in material conformance to their Specification.
- 12.3 The Supplier's obligations under clause 12.1 shall not apply to Services modified or used by the Customer other than in accordance with the Contract or the Supplier's instructions. The Customer shall indemnify the Supplier against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by the Supplier in connection with any claim arising from such modification or use.

13 Confidentiality and announcements

- 13.1 The Customer shall keep confidential all Confidential Information of the Supplier and of any Affiliate of the Supplier and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
 - 13.1.1 any information which was in the public domain at the date of the Contract;
 - 13.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - 13.1.3 any information which is independently developed by the Customer without using information arising as the consequence of a breach of a confidentiality obligation by a third party to the Supplier;
 - 13.1.4 any information which is independently developed by the Customer without using information supplied by the Supplier or by any Affiliate of the Supplier; or
 - 13.1.5 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract except that the provisions of clauses 13.1.1 to 13.1.4 shall not apply to information to which clause 13.4 relates.
- 13.2 This clause shall remain in force for a period of five years from the date of the Contract and, if longer, three years after termination of the Contract.
- 13.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

- 13.4 To the extent any Confidential Information is Protected Data (as defined in clause 14) such Confidential Information may be disclosed or used only to the extent such disclosure or use does not conflict with any of the provisions of clause 14.1.

14 Processing of personal data

- 14.1 The parties agree that the Customer is a Controller and that the Supplier is a Processor for the purposes of processing Protected Data pursuant to the Contract. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to the Supplier in respect of Protected Data (including the terms of the Contract) shall at all times be in accordance with Data Protection Laws. All parties agree that where there is conflict between this clause and that defined in the SLA, then the SLA will take precedence. Data Protection Laws
- 14.2 The Supplier shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of the Contract.
- 14.3 The Customer shall indemnify and keep indemnified the Supplier against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the Customer of its obligations under this clause 14.
- 14.4 The Supplier shall:
- 14.4.1 only process (and shall ensure Supplier Personnel only process) the Protected Data in accordance with the Service Level Agreement and the Contract (and not otherwise unless alternative processing instructions are agreed between the parties in writing) except where otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest); and
- 14.4.2 without prejudice to clause 14.1, if the Supplier believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall promptly inform the Customer and be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.
- 14.5 Taking into account the state of technical development and the nature of processing, the Supplier shall implement and maintain the technical and organisational measures set out in the Service Level Agreement to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.
- 14.6 The Supplier shall:
- 14.6.1 not permit any processing of Protected Data by any agent, subcontractor or other third party (except its own or its SubProcessors'

- own employees in the course of their employment that are subject to an enforceable obligation of confidence with regards to the Protected Data) without the prior written authorisation of the Customer;
- 14.6.2 prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each SubProcessor under a written contract containing materially the same obligations as under this clause 14 that is enforceable by the Supplier and ensure each such Sub-Processor complies with all such obligations;
 - 14.6.3 remain fully liable to the Customer under the Contract for all the acts and omissions of each Sub-Processor as if they were its own; and
 - 14.6.4 ensure that all persons authorised by the Supplier or any SubProcessor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.
- 14.7 The Customer authorises the appointment of the Sub-Processors listed in the Service Level Agreement.14.8 The Supplier shall (at the Customer's cost):
- 14.8.1 assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to the Supplier; and
 - 14.8.2 taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.
- 14.9 The Supplier shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the United Kingdom or European Economic Area or to any International Organisation without the prior written consent of the Customer.
- 14.10 The Supplier shall, in accordance with Data Protection Laws, make available to the Customer such information that is in its possession or control as is necessary to demonstrate the Supplier's compliance with the obligations placed on it under this clause 14 and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer provided such auditor is not conflicted and does not interfere with the normal business of the Supplier) for this purpose (subject to a maximum of one audit request in any 12 month period under this clause 14.10).
- 14.11 The Supplier shall notify the Customer without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Protected Data.
- 14.12 On the end of the provision of the Services relating to the processing of Protected Data, at the Customer's cost and the Customer's option, the Supplier shall either return all of the Protected Data to the Customer or securely dispose

of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires the Supplier to store such Protected Data. This clause 14 shall survive termination or expiry of the Contract.

15 Force Majeure

- 15.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
 - 15.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and
 - 15.1.2 uses best endeavours to minimise the effects of that event.
- 15.2 If, due to Force Majeure, a party:
 - 15.2.1 is or shall be unable to perform a material obligation; or
 - 15.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 14 days or a total of more than 30 days in any consecutive period of 60 days; the other party may, within 30 days, terminate the Contract on immediate notice.

16 Termination

- 16.1 The Supplier may terminate the Contract or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if:
 - 16.1.1 the Customer commits a material breach of Contract and such breach is not remediable;
 - 16.1.2 the Customer commits a material breach of the Contract which is capable of being remedied and such breach is not remedied within 14 days of receiving written notice of such breach;
 - 16.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after the Supplier has given notification that the payment is overdue; or
 - 16.1.4 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 16.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
 - 16.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - 16.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;

- 16.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
 - 16.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
 - 16.2.5 has a resolution passed for its winding up;
 - 16.2.6 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;
 - 16.2.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
 - 16.2.8 has a freezing order made against it;
 - 16.2.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
 - 16.2.10 is subject to any events or circumstances analogous to those in clauses 16.2.1 to 16.2.9 in any jurisdiction;
 - 16.2.11 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 16.2.1 to 16.2.10 including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 16.3 The Supplier may terminate the Contract any time by giving not less than four weeks' notice in writing to the Customer if the Customer undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.
- 16.4 The right of the Supplier to terminate the Contract pursuant to clause 16.2 shall not apply to the extent that the relevant procedure is entered into for the purpose of a bona fide amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to the Contract.
- 16.5 If the Supplier becomes aware that any event has occurred, or circumstances exist, which may entitle the Customer to terminate the Contract under this clause 16, it shall immediately notify the Customer in writing.
- 16.6 The supplier may terminate this agreement in whole or in part for convenience by the provision of at least 3 months prior notice in writing to the customer.
- 16.7 Pursuant to clause 16.6 The Customer shall be entitled to seek recovery of those costs paid in advance related to services unavailable from the date of termination.

- 16.8 The Customer shall have the right to terminate this Agreement in whole or in part for convenience by the provision of at least 6 months prior notice in writing to the Supplier. Such notice shall not expire any earlier than the end date of the agreement as described in the order. If such notice is not received, the agreement will continue for further periods of 12 months until such notice is received. All parties agree that where there is conflict between this clause and that defined in the SLA, then the SLA will take precedence.
- 16.9 Pursuant to clause 16.8 the Supplier shall be entitled to seek recovery of those costs from the Customer it cannot defray as a result of the termination which shall include staff costs and termination of sub-contracts associated with this Agreement.
- 16.10 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.

17 Non-Solicitation of Supplier Personnel

- 17.1 In order to protect the legitimate business interests of the Supplier and each of its Affiliates, the Customer covenants with the Supplier for itself and as agent for each Affiliate that it shall not (except with the prior written consent of the Supplier):
- 17.1.1 attempt to solicit or entice away; or
- 17.1.2 solicit or entice away from the employment or service of the Supplier or any Affiliate whether or not with a view to employ or engage or otherwise facilitate the employment or engagement of the services of any Supplier Personnel who shall be deemed to be Restricted Person (as defined below) other than by means of a national advertising campaign open to all-comers and the general public at large and not specifically targeted at such staff of the Supplier and/or any Affiliate.
- 17.2 The Customer shall be bound by the covenant set out in clause 17.1 during the term of the Contract and for a period of 12 months after termination or expiry of the Contract.
- 17.3 For the purposes of this clause [], a “Restricted Person” shall mean any Supplier Personnel who, if they were involved in any capacity in any business concern which competes with the Supplier or its interests or otherwise the Customer is seeking to employ or engage or otherwise facilitate the employment or engagement of such a person who is in the habit of dealing with the Customer on behalf of the Supplier and could cause damage or loss to the Supplier or Affiliate’s interests.
- 17.4 If the Customer commits any breach of this clause 17, the Customer shall, on demand, pay to the Supplier or its relevant Affiliate a sum equal to one year's basic salary or the annual fee that was payable by the Supplier or relevant Affiliate to the Restricted Person plus the recruitment costs incurred by the Supplier or relevant Affiliate in replacing such person. The parties confirm that these liquidated damages are reasonable and proportionate to protect the legitimate interest of the Supplier or relevant Affiliate in performance.

18 Dispute resolution

- 18.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 18.
- 18.2 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.
- 18.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
- 18.3.1 within 7 days of service of the notice, the contract managers/appointed representatives of the parties shall meet to discuss the dispute and attempt to resolve it.
- 18.3.2 if the dispute has not been resolved within 7 days of the first meeting of the contract managers/appointed representatives, then the matter shall be referred to the chief executives (or persons of equivalent seniority).

The chief executives (or equivalent) shall meet within 7 days to discuss the dispute and attempt to resolve it.

- 18.4 The specific format for the resolution of the dispute under clause 18.3.1 and, if necessary, clause 18.3.2 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.
- 18.5 If the dispute has not been resolved within 14 days of the first meeting of the chief executives (or equivalent) under clause 18.3.2 then the matter may, with the agreement of both parties, be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.
- 18.6 Upon either party invoking the provisions of (section 18) the Supplier reserves the right to terminate the contract at any time for convenience provided a minimum 30 days notice in writing is provided to the Customer.
- 18.7 Either party has the right to issue formal legal proceedings or commence arbitration at any time whether or not the steps referred to in clauses 18.3 , 18.5 or 18.6 have been completed.

19 Notices

- 19.1 Any notice or other communication given by a party under these Conditions shall:
- 19.1.1 be in writing and in English;
- 19.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and
- 19.1.3 be sent to the relevant party at the address set out in the Contract;
- 19.2 Notices may be given, and are deemed received:

- 19.2.1 by hand: on receipt of a signature at the time of delivery;
 - 19.2.2 by Royal Mail first class prepaid post: at 9.00 am on the second Business Day after posting;
 - 19.2.3 by Royal Mail International Signed post: at 9.00 am on the fourth Business Day after posting; and
 - 19.2.4 by email provided confirmation is sent by first class post: on receipt of a delivery email from the correct address.
- 19.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 19.1 and shall be effective:
- 19.3.1 on the date specified in the notice as being the date of such change; or
 - 19.3.2 if no date is so specified, five Business Days after the notice is deemed to be received.
- 19.4 All references to time are to the local time at the place of deemed receipt.
- 19.5 This clause does not apply to notices given in legal proceedings or arbitration.
- 19.6 A notice given under these Conditions is not validly served if sent by email otherwise than in accordance with clause 19.2.4.

20 Cumulative remedies

The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.

21 Time

Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.

22 Further assurance

The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

23 Entire agreement

- 23.1 The parties agree that the Contract and any documents entered into pursuant to it 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.
- 23.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

23.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

24 Variation

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, the Supplier.

25 Assignment

- 25.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent.
- 25.2 Notwithstanding clause 25.1, the Customer may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives the Supplier prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Customer acknowledges and agrees that any act or omission of its Affiliate in relation to the Customer's rights or obligations under the Contract shall be deemed to be an act or omission of the Customer itself.

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26 Set off

- 26.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which the Supplier has with the Customer.
- 26.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

27 No partnership or agency

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

28 Equitable relief

The Customer recognises that any breach or threatened breach of the Contract may cause the Supplier irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Supplier, the Customer acknowledges and agrees that the Supplier is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

29 Severance

- 29.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other

provision of the Contract shall not be affected.

- 29.2 If any provision of the Contract (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.

30 Waiver

- 30.1 No failure, delay or omission by the Contract in exercising any right, power or remedy provided by law or under the Contract 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.
- 30.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.
- 30.3 A waiver of any term, provision, condition or breach of the Contract by the Supplier shall only be effective if given in writing and signed by the Supplier, and then only in the instance and for the purpose for which it is given.

31 Compliance with law

Both Parties shall comply with all relevant laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

32 Conflicts within contract

If there is a conflict between the terms contained in the Conditions and the Terms of the Order, Schedules, Appendices or Annexes to the Contract, the terms defined within the Service Level Agreement shall prevail.

Accordingly, each party to the contract shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract and any documents referred to within it.

33 Third party rights

- 33.1 Except as expressly provided for in clause 33.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
- 33.2 Any Affiliate of the Supplier shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

34 Governing law

The Contract 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.

35 Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including noncontractual disputes or claims).