

1. DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement (unless the context requires otherwise).

1.1. Definitions

AI Tools: or artificial intelligence tools means software applications or platforms (for example that utilise artificial intelligence and or machine learning techniques to perform specific tasks or solve particular problems.

Agency: Identity Events Management Limited

Agency Client: the Agency's own client in relation to a Project.

Agency Materials: all materials, equipment and tools, drawings, specifications and data supplied by the Agency to the Supplier.

Agreed Project: the binding agreement for the provision of Goods and/or Services by the Supplier to the Agency agreed in accordance with clause 3.

AIGC: means any AI generated content that has been created, produced and/or otherwise generated by and or through the use of any Generative AI Tools.

Applicable Laws: all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national or international in any relevant jurisdiction.

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

Change: means any change to an Agreed Project including to any of the Goods and/or Services.

Change Request: means a request submitted by a party to effect a Change, setting out the detail of the Change and any impact of the Change on the Goods and/or Services, any milestones and the Fees.

Commencement Date: the date of execution of this Agreement.

Confidential Information: all confidential information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) disclosed by one Party to the other Party relating to:

- (a) the business, customers, suppliers, products, affairs and finances of the disclosing Party (or of any member of the Group to which the disclosing Party belongs);
- (b) trade secrets including, without limitation, technical data and know-how relating to the business of the disclosing Party (or of any member of the Group to which the disclosing Party belongs)
- (c) the business, customers, suppliers, products, affairs, finances, trade secrets, technical data and know-how of the disclosing Party's suppliers, customers (including the Agency Client), agents, distributors, shareholders, management or business contacts whether or not such information (if in anything other than oral form) is marked confidential.

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

Cancellation Event:

- (a) The Agency Client notifies the Agency that it is for any reason, including related to Pandemic, cancelling the Project and/or terminating the contract with the Agency in connection with the Project;
- (b) The Agency Client notifies the Agency that it shall be delivering the Project in a different location, including by allowing virtual attendance of some or all delegates; and/or
- (c) The Agency Client notifies the Agency that it intends to postpone the Project and the Agency is unable to accommodate the re-scheduled dates.

Deliverables: all documents, products, materials and Services developed or provided by the Supplier or its agents, subcontractors and personnel as part of or in relation to the Goods and/or Services in any form,

including without limitation those items specified within any Agreed Project.

Fees: the charges payable by the Agency for the supply of the Goods and/or Services by the Supplier as set out in the relevant Agreed Project.

Generative AI Tools: means software applications or platforms that utilise artificial intelligence and or machine learning techniques to perform specific tasks or solve particular problems by creating new content (based on the data that they have been trained on) when given an instruction or input prompt by the user.

Goods: means the goods (if any) specified in the Agreed Project including any Hire Goods

Group: in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company

Hire Goods: Goods indicated in the Agreed Project as being hired by the Supplier to the Agency.

Identity Shared Services : Identity Shared Services Limited and its subsidiaries

ISS Affiliate: a member of the Identity Shared Services Group

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

KPIs: the key performance indicators set out in the relevant Agreed Project.

Pandemic: a widespread national outbreak of infectious disease (including the disease known as coronavirus disease (COVID-19)) as determined by the World Health Organisation.

Party: the Agency and Supplier are each individually a Party to the Agreement, and jointly are the **Parties**.

Policies: the Agency's mandatory policies set out at [Identity Policies](#), as amended by the Agency from time to time and any policies provided by the Agency Client and shared with the Supplier from time to time.

Project means the Agency project for which the Goods and/or Services are being provided as set out in the Agreed Project.

Project Representatives: the representatives appointed by each Party in connection with an Agreed Project accordance with clause 6.2.

Purchase Order: the purchase order that the Agency provides to the Supplier for Goods and/or Services which accepts the Supplier's response to a RFP.

Representatives: the Agency Representative and the Supplier Representative.

Restricted Person: any person employed or engaged by the Agency at any time during the Term in a *senior* role who has or had material contact or dealings with the Supplier or any person employed or engaged by the Agency at any time during the Term in relation to the receipt of the Goods and/or Services who has or had material contact or dealings with the Supplier.

RFP: means the request for proposal issued by the Agency in which the Agency requests a quote from the Supplier setting out the price, activities, timetable, dependencies and sequence of events which the Supplier shall perform, or procure the performance of, when delivering the Goods and/or Services together with the specification of the Goods and/or Services agreed between the parties pursuant to clause 3.1.

Services: means those services (if any) specified in the Agreed Project.

Service Credits: means the amount payable to the Agency by the Supplier in relation to failure to meet the KPIs as set out the relevant Agreed Project.

Special Terms and Conditions: means the special terms and conditions, if any, set out in Schedule 2.

Step-In Trigger Event: means

- (a) any event that would entitle the Agency to terminate in accordance with this Agreement;

- (b) a default by the Supplier that is materially preventing or materially delaying the supply of the Goods and/or Services;
- (c) The Agency considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Agreement;
- (d) The Agency being advised by the Agency Client or a regulatory body that the exercise by the Agency or the Agency Client of its rights under Clause 27 is necessary;
- (e) The existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or a need by the Agency to take action to discharge a statutory duty.

Supplier: The person or organisation engaged via these Terms and Conditions for the provision of Goods and/or Services on behalf of the Agency

Supplier Materials: all materials, other than the Deliverables, provided to the Agency by the Supplier which are necessary or desirable to enable the Agency to receive and use the Goods and/or Services.

Supplier Personnel: all employees, staff, other workers, agents and consultants of the Supplier and of any subcontractors who are engaged in the provision of the Services from time to time.

TUPE Regulations: means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

1.2.1.1 Interpretation

1.2.1.2 A reference to a statute or statutory provision is a reference to it as amended, extended, or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made from time to time under that statute or statutory provision.

1.2.1.3 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.1.4 A reference to **writing** or **written** includes email.

1.2.1.5 Not Used

1.2.1.6 Not Used

1.2.1.7 A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.

1.2.1.8 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.1.9 If the event of any conflict or ambiguity between any of the parts of this Agreement, the following order of precedence will apply and a term contained in a document higher in the list shall have priority over one contained in a document lower in the list:

1.2.1.10 The Special Terms and Conditions (Schedule 2 to Part Three of this Agreement)

1.2.1.11 the relevant Agreed Project;

1.2.1.12 Part Two of this Agreement

1.2.1.13 Part One of this Agreement

1.2.1.14 In the event of any conflict or ambiguity between any parts of an Agreed Project, the following order of precedence will apply and a term contained in a document higher in the list shall have priority over one contained in a document lower in the list:

1.2.1.15 The Purchase Order

1.2.1.16 The Supplier's response to the RFP

1.2.1.17 The RFP.

2. COMMENCEMENT AND TERM

2.1. This Agreement commences on the Commencement Date and shall continue in force for a period of 3 years (**Initial Term**), unless terminated earlier in accordance with its terms, when it shall automatically terminate without notice, unless the parties agree in writing no less than 1 month prior to the expiry of the Initial Term (or any Renewal Term agreed under this clause) to extend the Agreement for a further 12 months (**Renewal Term**). Unless it is further extended under this clause or terminated earlier in accordance with its terms, this Agreement shall terminate automatically without notice at the end of a Renewal Term. The Initial Term and any Renewal Terms together will be the "**Term**".

3. PROJECT PROCESS

3.1. The Agency or an ISS Affiliate may at any time issue the Supplier with an RFP.

3.2. If the Agency or an ISS Affiliate issues an RFP for Goods and/or Services to the Supplier, then:

3.2.1. the Supplier shall, at its cost and expense, submit a response to the RFP to the Agency or the ISS Affiliate (as applicable) within 5 Business Days of the date of the RFP unless the Parties agree otherwise in writing;

3.2.2. the Supplier shall, at its cost and expense, promptly provide all necessary advice, support and assistance as may be required by the Agency or the ISS Affiliate (as applicable) from time to time in considering the response to the RFP;

3.2.3. the Supplier shall, at its cost and expense and promptly, update and amend the response to the RFP from time to time as necessary as a result of its interactions with the Agency or the ISS Affiliate (as applicable) pursuant to clause 3.2.2;

- 3.2.4. the Agency or the ISS Affiliate (as applicable) may accept the Supplier's response to the RFP by issuing a Purchase Order at which point it which becomes an **Agreed Project** or the Agency or the ISS Affiliate (as applicable) may notify the Supplier that it does not wish to proceed with the RFP.
- 3.3. The Agency or the ISS Affiliate (as applicable) shall be entitled to amend or withdraw an Agreed Project by giving the Supplier notice in writing in relation to any Goods and/or Services where performance or delivery has not commenced.
- 3.4. Each Agreed Project shall constitute a binding obligation on the Supplier to supply the Goods and/or Services in accordance with the terms of the Agreed Project and this Agreement.
- 3.5. Subject to clause 7 and clause 18, no variation to an Agreed Project shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each of the Agency or the ISS Affiliate (as applicable) and the Supplier respectively.
- 3.6. The Parties may agree Special Terms and Conditions at any time in writing. Any applicable Special Terms and Conditions will be added to Schedule 2 and incorporated into this Agreement. If any Special Terms and Conditions only apply to a particular Agreed Project this will be specified in Schedule 2.
- 3.7. No Purchase Orders shall be placed following the date on which notice is validly served to terminate this Agreement in accordance with its terms, or the date on which the Agreement expires pursuant to clause 2.1.
- 3.8. Where the Agency issues a Purchase Order in accordance with clause 3.2.4, the resulting Agreed Project shall form part of and be interpreted in accordance with the provisions of this Agreement. Where an ISS Affiliate issues a Purchase Order in accordance with clause 3.2.4, the resulting Agreed Project shall form a separate contract between the Supplier and the ISS Affiliate and the terms of this Agreement shall be incorporated into such contract save that all references to the Agency shall be substituted for references to the ISS Affiliate.
- 3.9. This clause 3 is made expressly for the benefit of ISS Affiliates as well as the Agency.

4. SUPPLY OF GOODS AND/OR SERVICES

- 4.1. The Supplier shall supply the Goods and/or Services to the Agency in accordance with this Agreement.
- 4.2. In delivering the Goods and performing the Services the Supplier shall meet any performance dates specified in the Agreed Project,
- 4.3. The Supplier undertakes, represents and warrants to the Agency that the Supplier shall:
 - 4.3.1. provide any Goods and perform the Services with the highest level of care, skill, and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - 4.3.2. Goods shall:
 - 4.3.2.1. conform with their description and any Goods specification;
 - 4.3.2.2. be free from material defects in design, material and workmanship;
 - 4.3.2.3. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - 4.3.2.4. be fit for any purpose held out by the Supplier.
 - 4.3.3. co-operate with the Agency in all matters relating to the supply of the Goods and/or Services, and comply with all instructions of the Agency;
 - 4.3.4. appoint and, at the written request of the Agency, replace without delay a manager, who shall have authority to contractually bind the Supplier on all matters relating to the Goods and/or Services;
 - 4.3.5. ensure that the Supplier Personnel are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in full and on time;
 - 4.3.6. ensure that any travel and subsistence arrangements between the Supplier and Supplier Personnel comply with and will continue to comply with all relevant HMRC requirements;

- 4.3.7. not use any Generative AI Tools to create, develop and or otherwise produce any Deliverables, and may not use or include any AIGC, including those provided by a third-party, in and as part of the Deliverables in the performance of the Services without the prior written consent of the Agency. The Supplier will ensure that it complies with any conditions required by the Agency relating to its use of Generative AI Tools if consent is given;
- 4.3.8. not use any AI Tools in the performance of the Services without the prior written consent of the Agency. The Supplier will ensure that it complies with any conditions required by the Agency relating to its use of AI tools if consent is given;
- 4.3.9. where the Deliverables include software, not include or use any software in the Deliverables licensed under the General Public Licence or any similar licence containing a “copyleft” requirement (**Restrictive Open Source Code**) in, or in the development of the Deliverables, and shall ensure that the Deliverables do not operate in such a way that it is compiled with or linked to any Restrictive Open Source Code. Without prejudice to the foregoing and except with the Agency’s written consent, no open-source software (meeting the Open Source Initiative’s open source definition from time to time) has been included or used in, or in the development of, any element of the Deliverables in contravention of its applicable licence terms and no third party is asserting, or has in the last five years asserted, any such contravention.
- 4.3.10. ensure, at the Suppliers own cost, that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in the Agreement and further to ensure that it complies with all local customs, byelaws, consents, licenses and permissions at all times in the jurisdiction and location in which the Goods are to be delivered and/or Services are to be performed;
- 4.3.11. ensure that the Goods and/or Services and Deliverables shall conform in all respects with the description set out in this Agreement and that the Goods, Services and/or Deliverables shall be fit for any purpose that the Agency expressly known to the Supplier or which is implied by the nature of the Goods, Services and/or Deliverables;
- 4.3.12. provide all equipment, tools, vehicles, and other items required to provide the Goods and/or Services whether included within the Agreed Project or not;
- 4.3.13. ensure that the Deliverables, and all goods, materials, standards, and techniques used in providing the Goods and/or Services are of the highest quality and are free from defects in workmanship, installation and design;
- 4.3.14. comply with (i) all Applicable Laws; and (ii) the Policies;
- 4.3.15. observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Agency’s premises and any third-party sites at which the Goods and/or Services may be provided from time to time as notified to the Supplier;
- 4.3.16. maintain a health and safety policy (and provide such policy to the Agency if requested by the Agency) and, in addition, the Supplier shall not take any actions putting the Agency or anyone else at risk;
- 4.3.17. hold all the Agency Materials in safe custody at its own cost and risk, maintain the Agency Materials in good condition until returned to the Agency or delivered to any third party nominated by the Agency in writing, and not dispose of or use the Agency Materials other than in accordance with the Agency’s written instructions or authorisation;
- 4.3.18. not do or omit to do anything which may cause the Agency to lose any licence, authority, consent, or permission on which it relies for the purposes of conducting its business;
- 4.3.19. notify the Agency in writing immediately upon the occurrence of a change of Control of the Supplier; and
- 4.3.20. comply with any reasonable procedures notified to it in advance by the Agency for vetting and accreditation in respect of all Supplier Personnel employed or engaged in the provision of the Goods and/or Services and not use any Supplier Personnel that do not pass such vetting and accreditation procedures to provide the Goods and/or Services.
- 4.4. The Agency shall have the right, in its absolute discretion, to require the Supplier not to use specified individuals employed or engaged by the Supplier, or by a subcontractor of the Supplier, in the supply of the Goods and/or Services. the Agency shall not exercise this right in breach of any law.

4.5. The Supplier shall indemnify the Agency, each ISS Affiliate and the Agency Client against any all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Agency, an ISS Affiliate and/or the Agency Client arising out of or in connection with damage to property (including but not limited to sites at which the Services are provided) and their contents caused by the negligence of the Supplier Personnel. This Clause 10.5 shall survive termination of this Agreement.

4.6. The Agency shall:

4.6.1. provide the Supplier with reasonable access at agreed times to such premises as are required for the purpose of providing the Services;

4.6.2. co-operate with the Supplier in all matters relating to the Services; and

4.6.3. provide such necessary information for the provision of the Services as the Supplier may reasonably request.

5. **KEY PERFORMANCE INDICATORS**

5.1. The Supplier will perform the Services in accordance with the KPIs.

5.2. Failure to comply with the above quality standards shall entitle the Agency to deduct Service Credits from the Fees in accordance with the relevant Agreed Project. This remedy shall be non-exclusive and without limitation to the Agency's other rights and remedies in respect of such failure.

5.3. If the Supplier fails to meet any KPIs twice in any single Project or in two consecutive Projects, the Agency will be entitled to terminate this Agreement immediately on written notice to the Supplier.

6. **CONTRACT MANAGEMENT AND REPORTING**

6.1. The Supplier Representative and the Agency Representative shall act as the main point of contact for Parties in respect of all matters relating to this Agreement.

6.2. Each Party shall appoint a representative to act as the main point of contact for the other Party in respect of all day-to-day matters relating to the supply of the Goods and/or Services under each Agreed Project.

6.3. The Parties shall ensure that the Representatives meet at least annually to discuss the progress being made in relation to the provision of the Goods and/or Services and any disagreements which may arise.

6.4. The Supplier shall ensure that the Supplier Representative also provides a status report for submission to the Agency in accordance with each Agreed Project detailing progress towards any milestones set out in the relevant Agreed Project and whether the Supplier has achieved the KPIs in the relevant period.

7. CHANGE CONTROL PROCEDURE

- 7.1. Subject to clause 7.6, where the Agency or the Supplier sees a need to change an Agreed Project whether in order to include an additional service, function or responsibility to be performed by the Supplier for the Agency under this Agreement, to amend the Goods or Services or the KPIs attached to the Goods or Services or otherwise, the Agency may at any time request, and the Supplier may at any time recommend, such Change and a Change Request shall be submitted by the party requesting/recommending (as applicable) the Change to the other. No Change shall come into effect until a Change Request is agreed in writing (which shall include email) by the Project Representatives of both parties.
- 7.2. Subject to clause 7.6, until such Change is made in accordance with Clause 7.1, the Agency and the Supplier shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms prior to such Change.
- 7.3. Any discussions which may take place between the Agency and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 7.4. Any Services or other work performed by the Supplier or Goods provided to the Agency which have not been agreed in accordance with the provisions of this Clause 7 shall be undertaken entirely at the expense and liability of the Supplier.
- 7.5. Each Party shall bear its own costs in relation to compliance with this clause 7.
- 7.6. The provisions of this clause 7 shall not apply to Changes to a Project as set out in clause 18.

8. DELIVERY, TITLE AND RISK

- 8.1. The Supplier shall supply the Goods and/or Services in accordance with the instructions and date(s) specified in the Agreed Project. Time is of the essence for delivery of the Goods and Services.
- 8.2. The Supplier shall ensure that:
 - 8.2.1. any Goods are marked and delivered in accordance with the Agency's instructions and any Applicable Laws or requirements of the carrier and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course; and
 - 8.2.2. each delivery of any Goods is accompanied by a delivery note which shows the Purchase Order number, date of Purchase Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 8.3. Unless otherwise agreed by the Agency in writing, any Goods shall be delivered during business hours with transportation charges and any other applicable charges pre-paid by the Supplier. The Supplier shall offload Goods at its own risk, as directed by the Agency.
- 8.4. The Agency and, if applicable, the Supplier shall inspect any Goods as soon as practicable following delivery and agree an inventory of the quality and quantity delivered. The Agency shall not be liable for any damage found on such inspection. If the Agency in its reasonable opinion considers any of the Goods to be in an unsuitable condition or of the wrong quantity either on delivery or subsequently, the Agency shall notify the Supplier, which shall promptly arrange the repair, correction or replacement of such Goods within 24 hours following the time of the Agency so notifying the Supplier. If the Supplier has not fully repaired, corrected or replaced (as appropriate) such Goods by the expiry of such 24-hour period, the Agency shall be entitled to enforce the Agency's remedies under Clause 13 (Remedies).
- 8.5. Unless otherwise specified, the Supplier shall be responsible for installing, commissioning and decommissioning any Goods.
- 8.6. The Agency shall not be deemed to have accepted any Goods until it has had a reasonable period of time to inspect them following delivery or, if later, within a reasonable period of time after any latent defect in them has become apparent.
- 8.7. The Supplier shall give the Agency prior written notice of the delivery under this Agreement of any Goods having a hazard to the health and safety of persons or property, identifying those hazards and giving full details of any precautions to be taken by the Agency on the delivery of such Goods and their subsequent storage or handling. The Supplier shall notify the Agency in writing of all requirements and restrictions imposed by governmental and other authorities or persons relating to the possession, use or onward supply of the Goods.
- 8.8. Where the Agency is purchasing any Goods:

- 8.8.1. title to the Goods shall pass to the Agency upon the earlier of delivery or the first payment by the Agency in respect of the Goods; and
- 8.8.2. risk in the Goods shall only pass to the Agency upon delivery of the Goods in accordance with this Agreement.
- 8.9. If title in the Goods passes to the Agency prior to delivery, the Supplier shall store the Goods separately and ensure that the Goods are fully insured until risk passes to the Agency.
- 8.10. Where the Agency is hiring Hire Goods:
 - 8.10.1. The Supplier shall hire the Hire Goods to the Agency for the hire period specified in the Agreed Project (**Hire Period**).
 - 8.10.2. Title to the Hire Goods indicated shall remain the property of the Supplier.
 - 8.10.3. The Supplier irrevocably permits the Agency and its contractors to use the Hire Goods in accordance with the manufacturer's instructions and recommendations during the Hire Period and subject to this Agreement.
 - 8.10.4. The undertakings, representations and warranties set out in clause 4.3 shall apply to the Hired Goods.
 - 8.10.5. If the Hire Goods do not comply with the provisions of clause 4.3, the Agency shall be entitled to require the Supplier to repair or replace the Hire Goods at the Supplier's expense within 2 Business Days or such shorter period of time as may be required by the Agency due to the Agency Client requirements of being requested by the Agency to do so.
 - 8.10.6. If the Supplier does not deliver the Hire Goods as required by the Agreed Project by the commencement of the Hire Period or if the Supplier does not comply with clause 8.10.5, the Agency may obtain substitute equipment from another supplier and recover from the Supplier any costs and expenses reasonably incurred by the Agency in obtaining such substitute equipment and/or terminate the Agreed Project with immediate effect on written notice.
 - 8.10.7. The risk of loss, theft or destruction of the Hire Goods shall pass to the Agency on completion of delivery until the due date for collection by the Supplier as set out in the Agreed Project or as subsequently agreed between the Parties.
 - 8.10.8. The Agency shall have no liability or responsibility whatsoever for: (i) any loss or damage to, and any charges or other payments to the Supplier for, any property of the Supplier (including any Hire Goods) which occurs after the date due for collection by Supplier; or (ii) theft or loss of Hire Goods not caused by the negligence of the Agency.
 - 8.10.9. The Agency shall not be liable to make any specified rental payments in connection with the Hire Goods in respect of the period between notifying the Supplier that the Hire Goods is defective and requires repair or replacement and the Supplier completing the delivery of the repaired or replacement Hire Goods.

9. FEES AND PAYMENT

- 9.1. The Fees payable by the Agency in respect of each Agreed Project for Goods and/or Services are contained in the relevant Agreed Project.
- 9.2. The Supplier shall maintain complete and accurate records of the Services provided under this Agreement (including where the Fees are calculable on a time and materials basis, time sheets showing the hours worked by Supplier Personnel in respect of the provision of the corresponding Services), sufficient to enable the Agency to verify the accuracy of any invoices submitted pursuant to this Agreement. The Supplier shall provide such copies of such records to on request for verification purposes.
- 9.3. The Supplier will be responsible for all out-of-pocket expenses incurred by it and Supplier Personnel in the performance of its obligations under this Agreement and under the Agreed Projects. For the avoidance of doubt the Supplier will not be reimbursed separately for these expenses.
- 9.4. In consideration for the provision of the Services, the Agency shall pay the Fees to the Supplier in accordance with this Clause 9.
- 9.5. The Agency and the Supplier may agree volumetric discounts in respect of the Fees. If volumetric discounts apply full details will be agreed in writing by the Parties.

- 9.6. All amounts payable by the Agency under this Agreement are exclusive of value added tax (VAT). Where any taxable supply for VAT purposes is made under this Agreement by the Supplier to the Agency, the Agency shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 9.7. The Supplier shall submit invoices for the Fees plus VAT if applicable to the Agency and the Agency shall pay such Fees in accordance with the payment schedule set out in the Agreed Project to a bank account nominated in writing by the Supplier.
- 9.8. Each Supplier invoice shall include the Purchase Order number and all supporting information reasonably required by the Agency. Failure to include a valid Purchase Order number on the invoice will result in the invoice being deemed invalid. The invoiced Fees shall not exceed the Purchase Order value.
- 9.9. Except as referenced above, the Agency shall pay all invoices that the Agency has determined are valid and undisputed and compliant in all respects with the Agreement within 30 days of the date of receipt.
- 9.10. If the Agency fails to make any payment due to the Supplier under this Agreement by the due date, then, the Agency shall pay interest on the overdue sum from the date 30 days after the Supplier notifies the Agency in writing that the payment is overdue until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 9.11. In relation to payments disputed in good faith, interest under paragraph 9.10 is payable only after the dispute is resolved, on sums found or agreed to be due, from 30 days after the dispute is resolved until payment.
- 9.12. In the event that the Supplier has failed to provide any Goods and/or Services in accordance with this Agreement, the Agency may withhold the Fees payable in connection with the relevant Goods and/or Services.
- 9.13. The Agency may, upon reasonable prior written notice, set off any amount owed by the Supplier against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Agency.

10. INTELLECTUAL PROPERTY

- 10.1. All Intellectual Property Rights in the Deliverables shall vest in and remain at all times the property of the Agency. The Supplier hereby assigns (or shall procure the assignment) to the Agency with full title guarantee, all existing and future Intellectual Property Rights in the Deliverables and of all materials embodying such rights to the fullest extent permitted by law. In so far as they do not vest automatically by operation of law or under this Agreement, the Supplier holds legal title in these rights on trust for the Agency. The Supplier shall do all such things and sign all documents necessary in the Agency's opinion to so vest all such Intellectual Property Rights in the Agency, and to enable the Agency to defend and enforce such Intellectual Property Rights, and the Supplier shall at the Agency's request waive or procure a waiver of applicable moral rights.
- 10.2. To the extent required to enable the Agency or its successors or assignees to enjoy and receive the benefit of the Goods, Services and/or Deliverables, the Supplier hereby grants the Agency and its successors and assignees a perpetual, irrevocable, transferable and royalty free licence (including the right to sub-license) to use all Supplier Materials. The Supplier undertakes to inform the Agency in writing of any intention to use Supplier Materials in connection with this Agreement (including the type and nature thereof, and the intended use to which they will be put) in good time prior to their use.
- 10.3. The Agency grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and use the Agency Materials for the term of the Agreement for the purpose of providing the Goods and/or Services to the Agency in accordance with this Agreement.
- 10.4. The Supplier hereby warrants that:
- 10.4.1. use by the Agency of the Goods and/or Services and the Deliverables shall not infringe the Intellectual Property Rights of any third party;
- 10.4.2. it has not, and shall not, grant or assign any rights of any nature in part or all the Deliverables to any third party; and
- 10.4.3. the Supplier has all the applicable permissions and licenses and has fulfilled any other relevant requirements required to provide to the Agency any third-party material ("**Third Party Material**") provided as part of the Goods and/or Services and that any Third-Party Material shall be appropriately flagged as such where not immediately identifiable.
- 10.5. In addition to any other remedy available to the Agency, the Supplier shall indemnify the Agency and each ISS Affiliate and the Agency Client against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Agency arising out of or in connection with any claim brought against the Agency and/or any ISS Affiliate and/or the Agency Client for actual or alleged infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt, use, sub-licensing or onward supply of the Goods, Services or Deliverables by the Agency and/or any ISS Affiliate and/or the Agency Client. This Clause 10.5 shall survive termination of this Agreement.
- 10.6. The Supplier acknowledges that the Agency may sub-license the rights granted in this Clause 10 to any part of the Human Network Group and any Agency Client.

11. LIMITATION OF LIABILITY

- 11.1. Nothing in this Agreement shall limit or exclude either Party's liability for fraud or fraudulent misrepresentation or for death or personal injury caused by negligence, or for any liability which cannot legally be excluded or limited.
- 11.2. Nothing in this Agreement shall exclude or limit the Supplier's liability under Clause 21 (Confidentiality), Clause 22 (Data Protection), Clause 23.9 (Freedom of Information and Transparency) or under the indemnities set out at Clauses 4.5, 10.5 or 23.2.
- 11.3. Subject to Clause 11.1 and 11.2, neither Party is liable, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with the Agreement for any indirect, special or consequential losses or damage.
- 11.4. Subject to Clause 11.1 and Clause 11.2, the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with the Agreement for all other loss and damage shall in no circumstances exceed 200% of the Fees paid or payable under the Agreement.

- 11.5. Subject to Clause 11.1, the Agency's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with the Agreement shall in no circumstances exceed 100% of the Fees paid or payable (had the Agreement not been breached) under the Agreement.

12. INSURANCE

- 12.1. During the term of the Agreement and for a period of six years thereafter, the Supplier shall ensure that it has in place insurance in such amounts and at such risk as would usually be carried by a responsible company in the Supplier's industry, with reputable insurers acceptable to the Agency and such policies shall include as a minimum (i) Professional Indemnity insurance of £1,000,000 or more per occurrence and (ii) Public Liability insurance of £2,000,000 or more per occurrence together with such insurance as is required by Applicable Law.
- 12.2. The Supplier shall on request supply to the Agency copies of such Insurance Policies and evidence that the relevant premiums have been paid.
- 12.3. The Supplier shall always comply with all terms and conditions of the Insurance Policies. If cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way or if the Supplier is aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Supplier shall notify the Agency without delay.

13. REMEDIES OF THE AGENCY

- 13.1. Where the Supplier is in breach of clause 4 or clause 8, the Agency may (as applicable and without liability to the Supplier arising out of such action and whether or not all or any part of the Goods and/or Services have been accepted by the Agency):
- 13.1.1. require the Supplier to prepare and submit to the Agency for the Agency's approval within such timeframes as the Agency shall require, a remediation plan setting out how, and the timescales in which, the Supplier will remedy the relevant failure(s) at the Supplier's cost;
- 13.1.2. require the Supplier, at the Supplier's expense, within 5 days after receipt of notice from the Agency or within 24 hours if during the agreed delivery period either: (i) to re-execute the Services; or (ii) to provide a full refund of the Fees (if paid);
- 13.1.3. refuse to accept any further deliveries or performance of the Goods and/or Services;
- 13.1.4. terminate the Agreed Project with immediate effect by giving written notice to the Supplier;
- 13.1.5. recover from the Supplier any expenditure reasonably incurred by the Agency in obtaining substitute supplies from another supplier;
- 13.1.6. carry out at the Supplier's expense, either on its own behalf or using a third party, any work reasonably necessary to make the Goods and/or Services comply with the Agreement; and/or
- 13.1.7. claim such damages as may have been incurred by the Agency as a result of the Supplier's breach of the Agreement.
- 13.2. Any remedy under the Agreement shall be without prejudice to any other right or remedy which has already accrued, or subsequently accrues, to the Agency, unless expressly agreed otherwise.
- 13.3. If the Agency exercises any right under Clause 13.1 in respect of Goods, the Agency may at its absolute discretion require the Supplier to collect the relevant Goods forthwith or return the Goods to the Supplier at the Supplier's cost.

14. TERMINATION

- 14.1. The Agency shall be entitled to terminate the Agreement without cause by giving the Supplier not less than 30 days prior written notice to the Supplier in writing without liability. If the Agency exercises its right to terminate the Agreement under this Clause 14.1, any Agreed Projects will continue subject to the terms of this Agreement until the relevant Goods are delivered or Services are completed.
- 14.2. Without affecting any other right or remedy available to it, the Agency may terminate this Agreement together with all Agreed Projects with immediate effect by giving written notice to the Supplier if:
- 14.2.1. there is a change of Control of the Supplier; or
- 14.2.2. the Supplier's financial position deteriorates to such an extent that in the Agency's opinion the Supplier's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy;

- 14.2.3. the Supplier fails to comply with Applicable Laws in the field of environmental, social or employment law; or
- 14.2.4. the Supplier commits a material breach of Clause 4 or Clause 8.
- 14.3. Without affecting any other right or remedy available to it, either Party may terminate the Agreement and all Agreed Projects with immediate effect by giving written notice to the other party if:
 - 14.3.1. the other Party commits a material breach of any term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so, or, where the breach concerns Goods or Services being completed where time is of the essence, the Supplier fails to remedy that breach within a period of 3 hours after being notified in writing to do so;
 - 14.3.2. the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
 - 14.3.3. the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 14.4. Following termination of the Agreement in accordance with this Agreement other than termination in accordance with clause 14.1, all Agreed Projects shall also terminate and the Agency's sole liability in respect of the Goods and/or Services shall be to pay the Supplier for any costs relating to the provision of the Goods and/or Services which have been properly incurred by the Supplier in accordance with this Agreement prior to the date of termination, provided that the Supplier submits a valid invoice for such amount within 30 days of such termination date.
- 14.5. Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.
- 14.6. Termination or expiry of the Agreement shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

15. OBLIGATIONS ON TERMINATION

- 15.1. On termination of the Agreement the Supplier shall:
 - 15.1.1. immediately deliver to the Agency any Confidential Information of the Agency and erase all of the Agency's Confidential Information from computer and communications systems and devices used by the Supplier, including such systems and data storage services provided by third parties (to the extent technically and legally practicable) provided that the Supplier may retain documents containing the Agency's Confidential Information to the extent required by law;
 - 15.1.2. immediately deliver to the Agency all Deliverables (whether or not then complete) and any the Agency Materials in the possession of the Supplier; and
 - 15.1.3. if so requested by the Agency, provide all assistance reasonably required by the Agency to facilitate the smooth transition of the Services to the Agency or any replacement supplier appointed by it.

16. POST-TERMINATION RESTRICTIONS

- 16.1. In order to protect the legitimate business interests of the Agency, the Supplier covenants with the Agency that it shall not (except with the prior written consent of the Agency):
 - 16.1.1. solicit or entice away (or attempt to solicit or entice away) from the Agency the business or custom of any Restricted Customer;
 - 16.1.2. be involved with the provision of goods or services to any Restricted Customer; or
 - 16.1.3. solicit, entice or induce, or endeavour to solicit, entice or induce, any Restricted Person of the other party with a view to employing or engaging the Restricted Person, or
 - 16.1.4. employ or engage, or offer to employ or engage a Restricted Person of the other party; or

- 16.1.5. carry on; or be engaged, concerned or interested in; or assist in any way, any business concern which is (or intends to be) in competition with the business of the Agency.
- 16.2. The Supplier shall be bound by the covenants set out in:
 - 16.2.1. Clause 16.1.2 and 16.1.5 during the Term and for a period of 3 months after termination of the Agreement; and
 - 16.2.2. Clauses 16.1.1, 16.1.3 and 16.1.4 during the Term and for a period of 6 months after termination of this Agreement.
- 16.3. For the purposes of this Clause 16, a **Restricted Customer** shall mean any firm, company or natural person the Agency Client on any Project for which the Supplier is providing the Services or Goods.
- 16.4. Notwithstanding clause 16.1 the Supplier may employ or engage any Restricted Person who has responded directly to a bona fide recruitment drive either through a recruitment agency engaged by the relevant party or via an advertisement placed publicly by the relevant party (either in the press, social media, online or in trade and industry publications).
- 16.5. In the event of a breach of clause 16.1.3 or 16.1.4 which results in a Restricted Person leaving the Agency and being employed or engaged by the Supplier the party in breach shall pay to the other party by way of liquidated damages an amount equivalent to 6 months' salary of the Restricted Person.
- 16.6. The provisions in Clause 16.5 shall be without prejudice to a party's ability to seek damages or claim injunctive relief.

17. **FORCE MAJEURE**

- 17.1. For the purposes of this Clause, "**Force Majeure Event**" means an event beyond the reasonable control of the affected party including, act of God, fire, flood, abnormal weather conditions, war, riot, civil commotion, terrorism, but excluding, failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services or any strikes or industrial dispute relating to the Supplier and/or its subcontractors or the negligence of or the lack of funds of the Supplier and its subcontractors but, for the avoidance of doubt, other than in respect of Clause 18 (where Pandemic shall be classified as a Force Majeure Event) it does not include any Pandemic related event.
- 17.2. Neither Party shall be in breach of this Agreement or any Agreed Project nor liable for any delay in performing, or failure to perform, any of its obligations under the Agreement or any Agreed Project if such delay or failure results from a Force Majeure Event provided that such Party complies with the obligations set out in this Clause 17 (Force Majeure). Save as provided in Clause 17.5, a Force Majeure Event will not entitle either party to terminate the Agreement or any Agreed Project.
- 17.3. The party affected by the Force Majeure Event ("**Affected Party**") shall immediately notify the other in writing of the matters constituting the Force Majeure Event and shall keep that party fully informed of their continuance and of any relevant change of circumstances whilst such Force Majeure Event continues.
- 17.4. The Affected Party shall take all reasonable steps available to it to minimise its effects on the performance of its obligations under this Agreement or any Agreed Project.
- 17.5. If the Force Majeure Event continues for longer than fifteen days the Agency may, whilst the Force Majeure Event continues immediately terminate the Agreement or the relevant Agreed Project by notice in writing to the Supplier, on a date to be specified in that notice.

18. **PROJECT DELAYS AND CANCELLATION**

- 18.1. Where the timing of the Project changes and/or preparations for the Project are delayed for any reason, the Agency may review the timeline for delivery or performance of the Services and any date ("**Key Date**") which is set out or defined in the Agreed Project which is relevant to the delivery or performance of the Services.
- 18.2. Subject to Clause 18.3, the Agency may in its sole discretion, as a result of any changes to Key Dates which arise out of the Agency's review under Clause 18.3, and subject to giving the Supplier at least 1 months' written notice:
 - 18.2.1. extend the Agreed Project by a period of up to 12 months from the date of expiry of the Agreed Project;

- 18.2.2. revise any dates for payment of the Fees provided that such dates shall only be revised as is reasonably necessary to address any delays to Key Dates resulting from the change.
- 18.3. In the event that the Agency exercises its discretion under Clause 18.2 to extend the Agreed Project, the parties shall consider what consequential amendments are needed including, without limitation, any variations to the KPIs, milestone dates for performance or delivery of Services under the Agreed Project and any increase or decrease in the Fees (with any increase in the Fees being limited to the relevant increase in the Consumer Price Index). In the event that the Parties are unable to agree consequential amendments to the Agreed Project, the Agency shall be entitled to terminate the Agreed Project immediately on written notice.
- 18.4. In the event that a Cancellation Event occurs, then the Agency shall be entitled to terminate the relevant Agreed Project immediately on written notice. Upon termination of the relevant Agreed Project following any cancellation of the Project, the Agency shall pay the Supplier for any costs relating to the provision of the Goods and/or Services which have been properly incurred by the Supplier in accordance with this Agreement and the relevant Agreed Project prior to the date of termination but shall have no further liability to the Supplier.
- 18.5. The Supplier acknowledges that the adverse effects of a Pandemic or other circumstances (including those circumstances set out in the definition of Cancellation Event) may result in the Agency needing to omit or remove work from an Agreed Project, rather than the Agency terminating an Agreed Project. For the avoidance of doubt, the Supplier agrees to such reduction in scope and shall not in any circumstances be entitled to recover or otherwise make a claim against the Agency in respect of loss of profit or loss of opportunity in respect of any commensurate reduction in the Fees where the scope of the Goods and/or Services is reduced.

19. **MARKETING AND BRANDING**

- 19.1. Where required by the Agency (either in written correspondence and/or the Agreed Project) the Supplier shall ensure that all Supplier Personnel, shall wear clothing branded with the Agency branding (which shall be provided by the Agency) whilst providing the Services on any site. In circumstances where the Agency does not provide branded clothing, the Supplier shall ensure that Supplier Personnel shall not wear clothing displaying branding belonging to any competitor of the Agency and compliant personal protection equipment fit for purpose (provided by the Supplier) as agreed from time to time.
- 19.2. The Supplier will not publish, refer to, comment upon, acknowledge or announce any Goods, Services or Deliverables completed in accordance with this Agreement or the name or any trademarks of the Agency, without the express consent in writing of a Director of the Agency.

20. **SUBCONTRACTING**

- 20.1. The Supplier may not, without the Agency's prior written approval, assign, novate, transfer, sublicense, subcontract, charge or otherwise deal in this Agreement or any Agreed Project or any of its rights or obligations arising pursuant to this Agreement or any Agreed Project (in whole or in part). Where any such approval is granted the Supplier shall remain liable to the Agency for the performance of all of its obligations under this Agreement or the relevant Agreed Project and the Supplier shall include in any sub-contracts (i) the same payment terms as are set out in Clause 5 (Fees) and (ii) the right of the Supplier to terminate the sub-contract if the sub-contractor fails to comply with legal obligations in the fields of environmental, social or labour law. The Supplier will provide the Agency with the details of each sub-contractors in their response to the RFP. Any changes to the sub-contractors notified to and approved by the Agency must be pre-approved in writing by the Agency.

21. **CONFIDENTIALITY**

- 21.1. Each Party shall at all times keep any Confidential Information of the other secret and confidential, and not at any time during the period of this Agreement, and for a period of five years after termination of the Agreement, disclose to any third party, except as permitted by Clause 21.2.2.
- 21.2. Each Party may disclose the other party's Confidential Information:
- 21.2.1. to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the Party's obligations under the Agreement. Each Party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other Party's Confidential Information comply with this Clause 21.2; and
- 21.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority and shall inform the other Party of the request and any disclosures.

- 21.3. Neither Party shall use the other Party's Confidential Information for any purpose other than to perform its obligations under this Agreement.
- 21.4. Each Party shall establish and maintain adequate security measures to safeguard the Confidential Information of the other Party from unauthorised access or use which shall include the use of industry-standard encryption protocols to protect all Confidential Information in transit and at rest, including but not limited to:
- 21.4.1. In Transit: Confidential Information must be encrypted using protocols such as TLS 1.2 or higher.
- 21.4.2. At Rest: Confidential Information must be encrypted using algorithms such as AES-256 or equivalent.
- 21.4.3. Access Control and Key Management: Each Party must implement strict access controls to ensure only authorized personnel can access encrypted data and such controls and access shall be reviewed on a regular basis.
- 21.5. The Agency and the Supplier acknowledge that each the Agency Client shall have the right to publish the Agency's compliance with its obligation to pay undisputed invoices within the specified payment period.

22. DATA PROTECTION

- 22.1. The following definitions and rules of interpretation shall apply in this clause 22:

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

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

Agency Personal Data: any personal data which the Supplier processes in connection with this agreement in the capacity of a processor on behalf of the Customer.

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

Supplier Personal Data: any personal data which the Supplier processes in connection with this agreement, in the capacity of a controller.

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

For the purposes of this clause 22, the terms **Commissioner, controller, data subject, personal data, personal data breach, processor** and **processing**, shall have the meaning given to them in the UK GDPR.

- 22.2. The parties will comply with all applicable requirements of the Data Protection Legislation. This clause 22 is in addition to, and does not relieve, remove or replace a party's obligations or rights under the Data Protection Legislation.
- 22.3. The parties have determined that for the purposes of the Data Protection Legislation, all personal data processed by the Supplier in connection with the Services shall be Agency Personal Data unless the Agreed Project specifies any data that shall be Supplier Personal Data.
- 22.4. The Agency will collect and process personal data relating to the Supplier Personnel or otherwise provided by the Supplier in accordance with the Agency's Data Protection Policy.
- 22.5. The Supplier shall process all Supplier Personal Data strictly in accordance with its data protection policy. The Supplier acknowledges and agrees that it is solely responsible for ensuring that the processing of Supplier Personal Data complies with Other Applicable Laws, including the Data Protection Legislation, and in particular, that all required fair processing information is provided to the relevant data subject.
- 22.6. The Supplier shall, in relation to any Agency Personal Data:

- 22.6.1. use and Process the Agency Personal Data only for the purpose of fulfilling its obligations under this Agreement and only in accordance with the Agency's express instructions unless the Supplier is required by Other Applicable Laws to otherwise process that Agency Personal Data. Where the Supplier is relying on Other Applicable Laws as the basis for processing Agency Personal Data, the Supplier shall promptly notify the Agency of this before performing the processing required by Other Applicable Laws unless those laws prohibit the Supplier from so notifying the Agency on important grounds of public interest. The Supplier shall immediately inform the Agency if, in the opinion of the Supplier, the instructions of the Agency infringe the Data Protection Legislation;
- 22.6.2. comply with the express instructions or directions of the Agency from time to time in connection with the use of the Agency Personal Data;
- 22.6.3. promptly (and without undue delay) inform the Agency if, in the Supplier's opinion, an instruction from the Agency infringes the Data Protection Legislation;
- 22.6.4. not disclose or transfer the Agency Personal Data to any third party or personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Agency;
- 22.6.5. keep the Agency Personal Data confidential;
- 22.6.6. take reasonable steps to ensure the reliability of any of the Supplier's Personnel who have access to the Agency Personal Data;
- 22.6.7. ensure that only those of the Supplier's Personnel who need to have access to the Agency Personal Data are granted access to the Agency Personal Data, on a need-to-know basis, and only for the purposes of the performance of this Agreement in accordance with the Agency's documented instructions; and all of the Supplier's Personnel required to access the Agency Personal Data are: (i) informed of the confidential nature of the Agency Personal Data; (ii) are under a contractual and/or statutory obligation to keep the Agency Personal Data confidential; and (iii) are periodically trained and made aware of the applicable privacy and information security requirements;
- 22.6.8. ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Agency Personal Data and/or accidental loss, destruction, or damage to the Agency Personal Data. Such technical and organisational measures will include as a minimum compliance with the Agency's Data Protection and Cyber-Security Policies as supplied from time to time and shall include:
- 22.6.8.1. the pseudonymisation and encryption of Agency Personal Data;
- 22.6.8.2. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- 22.6.8.3. the ability to restore the availability and access to Agency Personal Data in a timely manner in the event of a physical or technical incident;
- 22.6.8.4. the use of industry-standard encryption protocols as set out in clause 21.4; and
- 22.6.8.5. a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- In assessing the appropriate level of security, the Supplier shall take into account in particular of the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Agency Personal Data transmitted, stored or otherwise processed.
- 22.6.9. not process or otherwise transfer any Agency Personal Data outside of the UK without the Agency's prior written consent;
- 22.6.10. assist the Agency in responding to any data subject access request and with ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, privacy impact assessments and consultations with supervisory authorities or regulators;
- 22.6.11. notify the Agency without undue delay on becoming aware of a personal data breach or communication (whether from the Commissioner, any data subject, supervisory authority or other third party) which relates to the Agency's or Supplier's compliance with the Data Protection Legislation or which otherwise relates to the Agency Personal Data;

- 22.6.12. at the written request of the Agency, delete or return all Agency Personal Data and any copies thereof to the Agency on termination of this Agreement unless required by the Data Protection Legislation or any Other Applicable Laws to store the Personal Data. For the purposes of this clause 22.6.13 the obligation to "delete" data includes the obligation to delete data from back-up systems as well as live systems; and; and
- 22.6.13. maintain complete and accurate records and information to demonstrate compliance with this Clause 22 and allow for audits by the Agency or the Agency's designated auditor to demonstrate compliance with the Data Protection Legislation and this clause 22.
- 22.7. The Agency may, at any time on not less than 30 days' notice, revise clause 22.6 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

23. TAXATION

- 23.1. The Supplier shall be fully responsible for and shall indemnify the Agency for and in respect of any Tax (howsoever arising or assessed) and any other liability, deduction, contribution, assessment or claim arising from or made in connection with this Agreement, the provision of any Supplies pursuant to this Agreement or any payment or benefit received by any person engaged by the Supplier to perform the Supplies or any of them.
- 23.2. The Supplier shall further indemnify the Agency against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Agency in connection with or in consequence of any such liability, deduction, contribution, assessment or claim.
- 23.3. The Supplier shall use all reasonable endeavours to avoid engaging any person who is not subject to full deduction of Tax as an employee or deemed employee under PAYE on the payroll of the Supplier or a tax compliant agency or umbrella company ("**IR35 Worker**") for the provision of any of the Services.
- 23.4. The Supplier warrants that it is the "end client" for the purposes of IR35 in respect of each IR35 Worker and shall in respect of each IR35 Worker:
- (a) provide to the Agency details of the assessment and record-keeping processes which the Supplier shall use to determine the status of all IR35 Workers for IR35 purposes;
 - (b) provide to the Agency a monthly update setting out details of all assessments by the Supplier of IR35 Workers which have been made for IR35 purposes; and
 - (c) provide on demand all such assistance, information and documentation (including without limitation copy correspondence) as the Agency may require in relation to any query, enquiry or investigation in connection with any IR35 status determinations made (or required to be made) in respect of any IR35 Worker, including in connection with any appeal.
- 23.5. The Supplier shall use all reasonable endeavours to comply with its own obligations pursuant to IR35 and shall procure that the IR35 Worker and any other intermediary so complies.
- 23.6. If HMRC at any time, whether following an enquiry or PAYE audit or otherwise, determine that IR35 applies and the Agency is the "end client" for IR35 purposes in respect of any IR35 Worker, the Supplier shall indemnify the Agency in full in respect of any costs, expenses, damages or loss (including any Tax, interest and penalties) incurred by the Agency in connection therewith (the "IR35 Liability") and the Agency may at its option deduct from any payment due to the Supplier an amount equal to any such IR35 Liability. The Supplier shall pay to the Agency on demand a sum equal to the amount of any IR35 Liability not so deducted.
- 23.7. The Supplier shall maintain records of any IR35 Worker, including records of any payment or benefit provided to or for the benefit of the IR35 Worker, copies of all status determination statements and any correspondence relating thereto and the Supplier shall provide copies of such records to the Agency on demand.
- 23.8. The Supplier shall (and shall procure that its associated persons shall) not engage in any activity, practice or conduct which would constitute either a UK tax evasion facilitation offence or a foreign tax evasion facilitation offence for the purposes of Criminal Finances Act 2017 and shall have and maintain throughout the Term of this Agreement such policies and procedures as are reasonable to prevent the facilitation of tax evasion by another person, as required by Criminal Finances Act 2017.
- 23.9. The Supplier shall on demand provide to the Agency details of the reasonable prevention measures it has taken to prevent the commission of an offence pursuant to Criminal Finances Act 2017 and

shall promptly report to the Agency any request or demand from a third party to facilitate the evasion of tax in connection with the performance of this Agreement.

24. **FREEDOM OF INFORMATION AND TRANSPARENCY**

- 24.1. The Supplier acknowledges that the Agency Client may be subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIRs**) and that in such circumstances the Agency has certain obligations to the Agency Client relating to the FOIA and the EIRs.
- 24.2. The Supplier shall (and shall procure that its sub-contractors (if any)) shall:
 - 24.3. provide all necessary assistance and cooperation as reasonably requested by the Agency to enable the Agency to comply with its obligations to the Agency Client under the FOIA and EIRs; and
 - 24.4. transfer to the Agency all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Business Days of receipt.
- 24.5. The Supplier acknowledges that the Agency may be required under the FOIA and EIRs to disclose Information (including commercially sensitive information) without consulting or obtaining consent from the Supplier. the Agency shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in the Agreement)) the Agency shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is except from disclosure in accordance with the FOIA and EIRs.

25. EQUALITY, SOCIAL VALUES AND MODERN SLAVERY

- 25.1. The Supplier shall and shall procure that all of its Group companies, sub-contractors and all of its and their personnel shall at all times comply with all Applicable Laws, including all United Kingdom legislation relating to all forms of discrimination including (without limitation) the Equality Act 2010 and/or any statutory modifications or re-enactments thereof relating to discrimination in employment.
- 25.2. The Supplier acknowledges the importance of social values and agrees to perform the Services in a manner that adheres to the principles and outputs set out in the Social Values Policy issued by the Agency and any related Action Plans issued by the Agency, to the extent reasonably applicable.
- 25.3. The Supplier shall, to the extent applicable, record the following:
- 25.3.1. Carbon Footprint - *calculation of outputs and targets for reduction*
- 25.3.2. Energy Consumption: *targets in the usage of greener energy*
- 25.3.3. Recycling Rate: *target recycling rates*
- 25.3.4. Supply Chain Miles: *target limits for the miles which materials and goods need to travel*
- 25.3.5. Waste Reduction: *target consumption reductions and re-use of materials,*
- and use any tool requested and supplied by the Agency to monitor compliance with the Agency's sustainability requirements as notified to the Supplier and upload any relevant information requested by the Agency.
- 25.4. In performing its obligations under this Agreement, the Supplier:
- 25.4.1. shall ensure that it and its personnel comply with the Modern Slavery Act 2015 and any modern-slavery and human trafficking policy that the Agency has in place from time to time;
- 25.4.2. provide to the Agency such information as the Agency may reasonably request in order to provide the Agency with assurance that there is no human trafficking in the Supplier's supply chains;
- 25.4.3. submit to the Agency a declaration of compliance with the Modern Slavery Act 2015 in a form to be provided by the Agency;
- 25.4.4. notify the Agency in writing (and setting out full details of the relevant circumstances) as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement or the Project; and
- 25.4.5. include in contracts with its subcontractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in clauses 25.4 to 25.8 (inclusive).
- 25.5. The Supplier represents and warrants to the Agency that, at the date of the Agreement, neither the Supplier nor any of its personnel:
- 25.5.1. has been convicted of any offence involving slavery and human trafficking anywhere in the world; and/or
- 25.5.2. so far as the Supplier is aware, having made all reasonable enquiries, is or has been notified that they may be the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of, or in connection with, slavery and human trafficking;
- 25.6. The Supplier shall inform the Agency promptly if there is any change to the representations and warranties set out in Clause 25.5, material or otherwise.
- 25.7. The Supplier shall maintain a complete set of records of all documentation and materials provided to the Company in connection with the Agreement and shall implement procedures for its own personnel, suppliers, sub-contractors, and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains. The Supplier shall make records available for the Company upon reasonable request and shall notify the Company as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Agreement.
- 25.8. The Supplier shall indemnify the Agency against any losses, liabilities, damages, costs (including, but not limited to, legal fees) and expenses incurred by, or awarded against, the Agency as a result of any breach by the Supplier of the Modern Slavery Act 2015.
- 25.9. The Agency may terminate this Agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a breach or suspected breach of Clauses 25.4 to 25.7

25.10. Any breach by the Supplier of Clauses 25.4 to 25.7 shall be deemed a material breach of this Agreement which is incapable of remedy.

26. **CORRUPT GIFTS OR PAYMENTS**

For the purposes of this clause 26, “**Relevant Requirements**” means all Applicable Laws relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

26.1. The Supplier represents and warrants that neither it, nor to the best of its knowledge any of its Supplier Personnel or sub-contractors, have at any time prior to the Commencement Date: been convicted of any offence involving bribery or corruption, fraud or dishonesty;

26.1.1. been the subject of investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Requirements; or; or

26.1.2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on grounds related to corruption, bribery or fraud offences or misconduct.

26.2. The Supplier shall (and shall procure that the Supplier Personnel shall) during the Term:

26.2.1. comply with the Relevant Requirements;

26.2.2. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

26.2.3. comply with the Agency’s Ethics, Anti-bribery and Anti-corruption Policies set out at Identity Policies, as the Agency may update them from time to time (**Relevant Policies**);

26.2.4. not do, or omit to do, any act that will cause or lead the Agency or the Agency Client to be in breach of any of the Relevant Requirements or Relevant Policies;

26.2.5. establish, maintain and enforce its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policies and clause 26.2.2;

26.2.6. notify the Agency (in writing) if it becomes aware of any breach of clause 26.2.1 or clause 26.2.2 or 26.2.4, or has reason to believe that it or any Supplier Personnel have received a request or demand for any undue financial or other advantage in connection with the performance of this Agreement;

26.2.7. immediately notify the Agency (in writing) if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier and the Supplier warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the Commencement Date;

26.2.8. if requested, provide the Agency with reasonable assistance, to enable the Agency to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any of the Relevant Requirements or Relevant Policies;

- 26.2.9. if so required by the Agency, within 20 days of the date of this Agreement, and annually thereafter, certify to the Agency in writing signed by an officer of the Supplier, compliance with this clause 26 by the Supplier, Supplier Personnel and all persons referred to in clause 26.3. The Supplier shall provide such supporting evidence of compliance as the Agency may reasonably request;
- 26.2.10. immediately notify the Agency if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 26.2 at the relevant time.
- 26.3. The Supplier shall ensure that any of its agents, consultants, contractors, subcontractors or other persons engaged in performance of the Supplier's obligations under this Agreement do so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 26 (**Relevant Terms**). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Agency for any breach by such persons of any of the Relevant Terms.
- 26.4. If the Supplier makes a notification to the Agency under Clause 26.2.6 or 26.2.10, the Supplier shall respond promptly to the Agency's enquiries, co-operate with any investigation, and allow the Agency to audit any books, records and/or any other relevant documentation subject to Clause 21.
- 26.5. If the Supplier breaches this clause 26, the Agency may by notice:
- 26.5.1. require the Supplier to remove any Supplier Personnel whose acts or omissions have caused the Supplier's breach from the Project; or
- 26.5.2. immediately terminate this Agreement for material default.
- 26.6. Breach of this clause 26 shall be deemed a material breach incapable of remedy under clause 14.3.

27. STEP-IN RIGHTS

- 27.1. On the occurrence of a Step-In Trigger Event, the Agency and/or the Agency Client may serve notice on the Supplier "a **Step-In Notice**") that it will be taking action under this Clause 27, either itself or with the assistance of a third party. The Step-In Notice shall set out the following:
- (a) the action the Agency and/or the Agency Client wishes to take and, in particular, the Goods and/or Services that it wishes to control or otherwise supervise ("the **Required Action**");
 - (b) the Step-In Trigger Event that has occurred and whether the Agency and/or the Agency Client believes that the Required Action is due to the Supplier's default;
 - (c) the date on which the Agency and/or the Agency Client wishes to commence the Required Action;
 - (d) the time period which the Agency and/or the Agency Client believes will be necessary for the Required Action;
 - (e) whether the Agency and/or the Agency Client will require access to the Supplier's premises; and
 - (f) to the extent practicable, the impact that the Agency and/or the Agency Client anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.

- 27.2. Following service of a Step-In Notice, the Agency and/or the Agency Client shall:
- 27.3. take the Required Action set out in the Step-In Notice and any consequential additional action that it reasonably believes is necessary to achieve the Required Action;
- 27.4. keep records of the Required Action taken and provide information about the Required Action to the Supplier;
- 27.5. co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Agency is not assuming control; and
- 27.6. act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the rights of the Agency and the Agency Client under this Clause 27.
- 27.7. For so long as and to the extent that the Required Action is continuing, then:
- 27.8. the Supplier shall not be obliged to provide the Services to the extent that it is the subject of the Required Action, though the Supplier shall remain liable for the supply of the Goods and/or Services (even those being performed as part of the Required Action) as though they were supplied by the Supplier;
- 27.9. no deductions shall be applicable in relation to the Fee in respect of Goods and/or Services that are the subject of the Required Action; and
- 27.10. the Agency shall pay to the Supplier the Fee after subtracting any applicable deductions and the Agency's and/or the Agency Client costs of taking the Required Action as set out in clause 27.7.
- 27.11. Before ceasing to exercise its step-in rights under this Clause 27, the Agency and/or the Agency Client shall deliver a written notice to the Supplier (a "**Step-Out Notice**"), specifying:
- 27.12. the Required Action it has actually taken; and
- 27.13. the date on which the Agency plans to end the Required Action ("the "**Step-Out Date**") subject to the Agency being satisfied with the Supplier's ability to resume the supply of the Goods and/or Services and the Supplier's plan.
- 27.14. The Supplier shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days (or twenty four (24) hours if within ten (10) Working Days of the start of the Project or during the Project) prior to the Step-Out Date, develop for the Agency's and/or the Agency Client's approval (as the case may be) a draft plan (a "**Step-Out Plan**") relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Agreement and the relevant Agreed Project.
- 27.15. If the Agency and/or the Agency Client (as the case may be) does not approve the draft Step-Out Plan, they shall inform the Supplier of the reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Agency and/or the Agency Client for approval. the Agency and/or the Agency Client (as the case may be) shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 27.16. The Supplier shall bear its own costs in connection with any step-in by the Agency and/or the Agency Client under Clause 27, provided that the Agency shall reimburse the Supplier's reasonable additional costs and expenses incurred directly as a result of any step-in action taken by the Agency under:
- (a) limbs (b) or (c) of the definition of a Step-In Trigger Event; or
 - (b) limbs (d) and (e) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Agency serving the Step-In Notice is identified as not being the result of the Supplier's Default).
- 27.17. Except as expressly set out in this clause 27, nothing in this clause limits the Supplier's liability to the Agency for any breach of this Agreement (including any breach giving rise to the step-in itself).
- 27.18. The exercise by the Agency of its rights under this Clause 27 is without prejudice to its other rights or remedies, including any right to terminate this Agreement.
- 28. AUDIT, TRANSPARENCY AND PROVISION OF INFORMATION**
- 28.1. Upon a request from the Agency where the Agency Client requires it, the Supplier will provide full transparency to the Agency in relation to:
- 28.1.1. the way in which the Fees are calculated;

- 28.1.2. the Supplier's costs broken down against each Service and/or Deliverable including actual capital expenditure;
- 28.1.3. the Supplier's actual profit, (collectively **Agreed Project Data**) and accordingly shall:
- 28.1.4. maintain and retain the Agreed Project Data for the Term and for a period of 7 years following the end of the Term; and
- 28.1.5. disclose the Agreed Project Data to the Agency on request.
- 28.2. The Supplier shall maintain complete and accurate books and records relating to this Agreement (including the Agreed Project Data) and shall allow the Agency and/or its agents to access, inspect and audit the Supplier's records, accounts and other relevant information and premises (including the making and removal of copy documents) at reasonable times on reasonable prior notice and solely to assess compliance with the terms of this Agreement. Where such access, inspection or audit is required by the Agency Client, a governmental authority or regulator, the Supplier shall allow such inspection or audit at any time and there shall be no limit to the number of such inspections or audits that can be undertaken. the Agency will pay the costs of any audits unless any discrepancy is revealed by an audit in which case the costs of that audit will be paid by the Supplier.

29. TRANSFER OF EMPLOYEES

- 29.1. The Supplier agrees to arrange its personnel and, if applicable, procure that any sub-contractor of the Supplier arranges its personnel, in relation to the provision of the Services in such a way that no contract of employment of any individual will transfer from the Supplier (or from any sub-contractor of the Supplier) to the Agency or to any New Supplier by virtue of the TUPE Regulations on the cessation or partial cessation of the provision of the Services by the Supplier, or otherwise.
- 29.2. If the employment of any individual is transferred from the Supplier (or any sub-contractor of the Supplier) to the Agency or to any New Supplier by virtue of the TUPE Regulations or any person asserts that his employment has so transferred, then the Agency or the New Supplier (as applicable) shall notify the Supplier within seven days of becoming aware of the fact, the Supplier may within twenty one days of receiving such notification offer to re-employ such individual, and not earlier than twenty one days after the Agency or the New Supplier (as applicable) notifies the Supplier of the transfer or alleged transfer the Agency or such New Supplier (as applicable) may terminate the employment of any such person (in so far as it has not already terminated).
- 29.3. The Supplier shall, on demand by the Agency, indemnify the Agency and each New Supplier against (or, at the option of the Agency, indemnify the Agency on its own behalf and/or on behalf of any such New Supplier), and as a separate obligation undertakes to pay to the Agency the amount of, all losses, fines, penalties, awards, liabilities, costs, claims, damages and expenses (including reasonable legal expenses on an indemnity basis) which the Agency and/or any such New Supplier may suffer or incur and which arise in connection with or as a result of:
 - 29.3.1. any claim or demand made by an employee or former employee of the Supplier arising from any act, fault or omission of the Supplier at any time up to the cessation or partial cessation of the provision of the Services by the Supplier;
 - 29.3.2. as a result of any failure to comply with the information and consultation requirements set out in the TUPE Regulations including any award of compensation under regulation 15 of TUPE save where such failure relates to the failure of the Agency or the New Supplier.
- 29.4. If the TUPE Regulations apply to transfer the employment of any person employed by the Supplier to the Agency or any New Supplier then if the Agency or such New Supplier shall serve a notice terminating the employment of such person within six months after the date of such transfer, the Supplier shall indemnify the Agency (for itself and a New Supplier) in respect of any statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which the Agency or a New Supplier is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.
- 29.5. In this Clause 2929, "**New Supplier**" means a supplier (who is not the Supplier) appointed by the Agency or the Agency Client to supply the Services (or similar Services) in succession to the Supplier on expiry or termination of the Agreement.

30. SEVERANCE

- 31. If a provision of this Agreement is, becomes or is found to be illegal, invalid or unenforceable (in whole or in part), such provision shall be deemed severed, and the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

32. NOTICES

- 32.1. Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:
- 32.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at the address given in this Agreement or as otherwise notified in writing to the other party; or
- 32.1.2. sent by email to the address specified in the Agreement Details.
- 32.2. Unless proven otherwise, any notice shall be deemed to have been received
- 32.2.1. if delivered by hand, at the time the notice is left at the address given in this Agreement or given to the addressee; or
- 32.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- 32.2.3. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 32.2.3, business hours mean 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 32.2.4. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

33. ENTIRE AGREEMENT

- 33.1. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 33.2. Each party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement, provided that nothing in this Agreement shall limit or exclude any liability for fraud or fraudulent misrepresentation.

34. NO VARIATION

- 34.1. Subject to clause 33.2, no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 34.2. Clause 33.1 shall not apply to variations to the Agreed Project as set out in clause 7 or clause 18.

35. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

36. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which, when executed, shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

37. THIRD PARTY RIGHTS

- 37.1. Unless expressly stated otherwise and subject to clause 36.2 below, 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 term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 37.2. The Agency Client may enforce any term of this Agreement against the Supplier.
- 37.3. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

38. NO WAIVER

A waiver by either party of any of the terms or conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or of any subsequent breach thereof. Waivers of any rights or remedies under this Agreement may only be given, and shall only be effective when given, in writing and no failure to exercise or delay in exercising any

right or remedy under this Agreement shall operate as a waiver of that or any other right or remedy.

39. ASSIGNMENT AND TRANSFER

The Agency may assign, novate, transfer or otherwise deal in this Agreement and its rights and obligations hereunder as it sees fit in its sole discretion from time to time and by entering into this Agreement the Supplier hereby consents to any novation of this Agreement from the Agency to the Agency Client.

40. DISPUTE RESOLUTION, GOVERNING LAW AND JURISDICTION

- 40.1. If any dispute arises between the parties out of, or in connection with, this Agreement, the matter shall be referred to the Supplier Representative and the Agency Representative who shall use their reasonable endeavours to resolve it.
- 40.2. If the dispute is not resolved within 14 days of the referral being made under Clause 39.1, it will be referred to the finance director of the Agency (Email: procurement@identityglobal.com; accountsUK@identityglobal.com) and a director of equivalent standing at the Supplier who will use their reasonable endeavours to resolve the dispute within 14 days of referral under this Clause 39.2.
- 40.3. Until the parties have completed the steps referred to in Clauses 39.1 and 39.2 and have failed to resolve the dispute, neither party shall commence formal legal proceedings except that either party may at any time seek urgent interim relief.
- 40.4. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- 40.5. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).