

**Professional Services Terms and Conditions**

The Client's attention is particularly drawn to the provisions of clause 11 (**Limitation of liability**).

**1. Interpretation**

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

**1.1 Definitions:**

<b>"Authorised Users"</b>	those employees, agents and independent contractors of the Client who are authorised by the Client to use the Services and the Documentation.
<b>"Business Day"</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
<b>"Client"</b>	the person or firm who purchases the Services from the Supplier.
<b>"Commencement Date"</b>	has the meaning given in clause 2.2.
<b>"Conditions"</b>	these terms and conditions as amended from time to time in accordance with clause 15.8.
<b>"Contract"</b>	the contract between the Supplier and the Client for the supply of Services in accordance with these Conditions and the Supplier Proposal.
<b>"Control"</b>	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression <b>change of Control</b> shall be interpreted accordingly.
<b>"Deliverables"</b>	deliverables produced by the Supplier for the Client as part of the Services.
<b>"Documentation"</b>	the document made available to the Client by the Supplier online via <a href="http://www.go-shine.co.uk">www.go-shine.co.uk</a> or such other web address notified by the Supplier to the Client from time to time which sets out the user instructions for the Services.
<b>"Force Majeure Event"</b>	has the meaning given to it in clause 14.
<b>"Intellectual Property Rights"</b>	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.

<b>"Normal Business Hours"</b>	9.00 am to 5.00 pm local UK time, each Business Day
<b>"Order"</b>	the Client's order for the supply of Services, as set out in the Supplier's Proposal.
<b>"Services"</b>	the services, including the Subscription Services and the Deliverables, supplied by the Supplier to the Client as set out in the Supplier's Proposal.
<b>"Software"</b>	the online software applications provided by the Supplier as part of the Services.
<b>"Subscription Services"</b>	has the meaning given to it in clause 3.1.
<b>"Supplier"</b>	Praxis42 Limited registered in England and Wales with company number 04152524.
<b>"Supplier Proposal"</b>	the description of the Services provided in writing by the Supplier to the Client.
<b>"User Subscriptions"</b>	the user subscriptions purchased by the Client which entitle Authorised Users to access and use the Services and the Documentation in accordance with the Contract.
<b>"UK GDPR"</b>	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

## 1.2 **Interpretation:**

- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.5 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 1.6 Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.7 A reference to writing or written excludes fax but not email.

## 2. **Basis of contract**

- 2.1 The Order constitutes an offer by the Client to purchase the Services in accordance with these Conditions and the Supplier's Proposal.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

- 2.3 Any descriptive matter or advertising issued by the Supplier and any illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract nor have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue.
- 2.6 The Client waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Client that is inconsistent with these Conditions.

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

- 3.1 The Supplier shall supply the Services to the Client in accordance with the Supplier Proposal in all material respects. As part of the Contract, the Supplier grants to the Client a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Authorised Users to use the subscription services that form part of the Services, as more particularly described in the Supplier Proposal and the Documentation ("**Subscription Services**") during the term of the Contract solely for the Client's internal business operations.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Supplier Proposal, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 3.3 The Supplier reserves the right to amend the Supplier Proposal if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Client in any such event.
- 3.4 The Supplier warrants to the Client that the Services will be provided using reasonable care and skill.

### **4. Client's obligations**

- 4.1 The Client shall:
- 4.1.1 ensure that the terms of the Order and any information it provides to the Supplier, whether to be contained in the Supplier Proposal or otherwise, are complete and accurate;
  - 4.1.2 co-operate with the Supplier in all matters relating to the Services;
  - 4.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
  - 4.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - 4.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

- 4.1.6 comply with all applicable laws; and
- 4.1.7 comply with any additional obligations as set out in the Supplier Proposal.
- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):
  - 4.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations;
  - 4.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
  - 4.2.3 the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Client Default.
- 4.3 The Client shall not:
  - 4.3.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
    - (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
    - (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
  - 4.3.2 access all or any part of the Subscription Services and Documentation in order to build a product or service which competes with the Subscription Services and/or the Documentation; or
  - 4.3.3 use the Subscription Services and/or Documentation to provide services to third parties; or
  - 4.3.4 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Subscription Services and/or Documentation available to any third party except the Authorised Users, or
  - 4.3.5 attempt to obtain, or assist third parties in obtaining, access to the Subscription Services and/or Documentation, other than as provided under this clause 4; or
  - 4.3.6 introduce or permit the introduction of, any virus into the Supplier's network and information systems.
- 4.4 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Subscription Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

- 4.5 The rights provided under this clause 4 are granted to the Client only, and shall not be considered granted to any subsidiary or holding company of the Client.
- 4.6 The Client shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the Subscription Services that:
- 4.6.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - 4.6.2 facilitates illegal activity;
  - 4.6.3 depicts sexually explicit images;
  - 4.6.4 promotes unlawful violence;
  - 4.6.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - 4.6.6 is otherwise illegal or causes damage or injury to any person or property;
- and the Supplier reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to any material that breaches the provisions of this clause.
- 4.7 In relation to the Authorised Users, the Client undertakes that:
- 4.7.1 the maximum number of Authorised Users that it authorises to access and use the Subscription Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
  - 4.7.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Subscription Services and/or Documentation;
  - 4.7.3 each Authorised User shall keep a secure password for their use of the Subscription Services and Documentation, that such password shall be changed no less frequently than once a month and that each Authorised User shall keep their password confidential;
  - 4.7.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;
  - 4.7.5 it shall permit the Supplier or the Supplier's designated auditor to audit the Subscription Services in order to establish the name and password of each Authorised User and the Client's data processing facilities to audit compliance with this Agreement. Each such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Client's normal conduct of business;
  - 4.7.6 if any of the audits referred to in clause 4.7.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Client shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and

- 4.7.7 if any of the audits referred to in clause 4.7.5 reveal that the Client has underpaid the Supplier, then without prejudice to the Supplier's other rights, the Client shall pay to the Supplier an amount equal to such underpayment within 10 Business Days of the date of the relevant audit.

## **5. User Subscriptions and Subscription Services**

- 5.1 The Client may from time to time during the term of the Contract request that the Supplier provide additional User Subscriptions. If at the absolute discretion of the Supplier it grants the request, then subject to any increase in the charges for the Services, grant access to the Subscription Services and the Documentation to such additional Authorised Users in accordance with the provisions of the Contract.
- 5.2 The Supplier shall use commercially reasonable endeavours to make the Subscription Services available 24 hours a day, seven days a week, except for:
- 5.2.1 planned maintenance carried out during the maintenance window set out in the Supplier Proposal; and
- 5.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Client at least 6 Normal Business Hours' notice in advance.
- 5.3 The Client acknowledges that the Subscription Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Client, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Client and the relevant third party, and not the Supplier. The Supplier recommends that the Client refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Subscription Services.

## **6. Bookings**

- 6.1 Where the Services include courses (whether in person or virtual) or site visits or other deliverables which require booking in advance for a specific date and/or time (a "Booking"), the Client shall be responsible for ensuring that employees, or other intended attendees from the Client are able to attend the Booking.
- 6.2 If the Client becomes aware that its employees, or other intended attendees cannot attend the Booking, it shall immediately notify the Supplier to cancel or amend the Booking.
- 6.3 Subject to clause 6.4, the Client may amend the date and time of the Booking once. Any further amendments are at the sole discretion of the Supplier.
- 6.4 Without prejudice to any other right or remedy the Supplier may have, if the Client fails to provide notice in accordance with clause 6.2, or does not provide such notice at least 14 days prior to the date of the Booking, the Client shall be responsible for paying all charges due to the Supplier for the Booking, and all reasonable costs incurred by the Supplier as a result of the Client's default.
- 6.5 The Client acknowledges that the charges payable by the Client pursuant to clause 6.4 are reasonable and proportionate when considered against (including but not limited to):

- 6.5.1 the loss of opportunity to the Supplier caused by the Client's default, such as the loss of income for the dates and times of the Booking, the difficulty in finding replacement work on the dates and times of the Booking at short notice, the preparation work that took place to prepare for the Services, and
- 6.5.2 any losses to the Supplier, such as third party supplier costs and cancellation charges, and (in the case of a failure to notify) any applicable travel costs.

## **7. Charges and payment**

- 7.1 The charges for Services are set out in the Supplier Proposal.
- 7.2 In the event of termination of the Contract (other than as a result of a default by the Supplier of its obligations under this Contract) in the following circumstances, without prejudice to any other right or remedy the Supplier may have, the following charges shall apply and shall be paid by the Client to the Supplier in addition to any other charges or otherwise due to the Supplier under the Contract:
  - 7.2.1 termination takes place 25 working days or more before the first day the Services are due to be provided to the Client – 20% of the total charges due to the Supplier under the Contract;
  - 7.2.2 termination takes place between 24 working days and 11 working days before the first day the Services are due to be provided to the Client – 40% of the of the total charges due to the Supplier under the Contract;
  - 7.2.3 termination takes place less than 10 working days before the first day the Services are due to be provided to the Client – all charges due to the Supplier under the Contract.
- 7.3 The Client acknowledges that the charges payable by the Client pursuant to clause 7.2 are reasonable and proportionate when considered against the loss of opportunity the Supplier in finding replacement work to be undertaken on the dates and times it had reserved for undertaking the Services and for the preparation work it would undertake ahead of providing the Services to the Client, or in the case of subscriptions, to reflect the value of content they have had access to download during the course of the subscription, which is reflected in the price charged for the subscription.
- 7.4 In respect of the Services, the Supplier shall invoice the Client in the intervals stated in the Supplier Proposal or in absence of any such provision in that proposal, the Supplier shall invoice the Client monthly in arrears.
- 7.5 The Client shall pay each invoice submitted by the Supplier:
  - 7.5.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Client; and
  - 7.5.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, andtime for payment shall be of the essence of the Contract.
- 7.6 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Client, the Client 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 or Goods at the same time as payment is due for the supply of the Services or Goods.

- 7.7 If the Client fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 12, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.7 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%.
- 7.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 7.9 Where the Services include a full-time consultant working on-site or remotely for the Client under a fixed-term assignment, the Supplier shall be entitled to allocate a reasonable amount of time for that consultant to take holiday during the agreed term. This shall not exceed the equivalent of 25 working days (pro rata for shorter assignments), excluding UK public holidays. Holiday dates will be coordinated with the Client to minimise disruption to the Services.
- 7.9.1 In the event that the assigned consultant is absent due to sickness, the Supplier shall not be required to make any adjustment to the Services or fees where such absence does not exceed five (5) consecutive Business Days.
- 7.9.2 Where the consultant's absence due to sickness:
- (a) exceeds five (5) but is fewer than ten (10) consecutive Business Days, the Supplier shall not be required to make any adjustments to the Services or fees, but may, at its sole discretion, discuss temporary mitigation measures with the Client;
  - (b) exceeds ten (10) consecutive Business Days, the Supplier shall use reasonable endeavours to:
    - (i) offer a suitable alternative consultant, subject to availability and agreement from the Client;
    - (ii) agree a reasonable fee adjustment on a pro rata basis for the period beyond ten (10) Business Days of absence, to reflect any materially impacted delivery of Services;
    - (iii) extend the duration of the assignment by a period equivalent to the consultant's absence beyond ten (10) Business Days, to allow for completion of the Services without a reduction in scope or fee.
- 7.9.3 Any alternative arrangements or fee adjustments under Clause 7.4.2 shall be agreed in writing between the parties. In all cases, the Supplier's liability shall remain limited in accordance with Clause 12 of these Conditions.



## **8. Intellectual property rights**

- 8.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by the Supplier. In particular, the Client acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Subscription Services and the Documentation. Except as expressly stated herein, the Contract does not grant the Client any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Subscription Services or the Documentation.
- 8.2 The Supplier grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy the Deliverables (excluding materials provided by the Client) for the purpose of receiving and using the Services (excluding the Subscription Services) and the Deliverables in its business.
- 8.3 The Client shall not sub-license, assign or otherwise transfer the rights granted by clause 8.2.
- 8.4 The Client grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Client to the Supplier for the term of the Contract for the purpose of providing the Services to the Client.
- 8.5 The Client warrants that all Intellectual Property Rights in any materials provided by the Client and its use by Praxis42 for the purpose of providing the Services will not infringe the Intellectual Property Rights or any other rights of any third party and the Client shall indemnify and hold the Supplier harmless against any loss, damage, costs, expenses or other any claims arising out of or relating to any such infringement.
- 8.6 The Client shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Client's use of the Subscription Services and/or Documentation, provided that:
- 8.6.1 the Client is given notice of any such claim;
- 8.6.2 the Supplier provides reasonable co-operation to the Client in the defence and settlement of such claim, at the Client's expense; and
- 8.6.3 the Client is given sole authority to defend or settle the claim.

## **9. Data protection**

- 9.1 The following definition applies in this clause 9:

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426).

- 9.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

## **10. Confidentiality and non-solicitation**

- 10.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 10.2.
- 10.2 Each party may disclose the other party's confidential information:
- 10.2.1 to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 10; and
  - 10.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 10.4 The Client shall not directly or indirectly solicit, induce, recruit, enter into or execute any deeds, documents, agreements, form, contract, any arrangement or encourage any of the Supplier's employees, contractors, consultants, associates, assignees, affiliates ("**Persons**") to leave their employment or engagement with the Company or take away Persons either for itself or any other person or entity during the term of the Contract and for a period of 24 (twenty-four) months from the termination or expiry of the Contract. The Client shall not enter into or execute any deeds, documents, agreements, form, contract or any arrangement (collectively "**Arrangement**") with the Persons, directly or indirectly, without prior written consent of the Supplier. During the term of the Contract and for three (3) years from termination or expiry of the Contract, the Client agrees that it shall not solicit, engage or hire for employment or as a consultant, any former employee, former consultant, former assignee or former associate of the Supplier for a period of six (6) months from the date of his or her termination or resignation from the assigned position at the Supplier.

## **11. Limitation of liability**

- 11.1 References to liability in this clause 11 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 11.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 11.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 11.3.1 death or personal injury caused by negligence;
  - 11.3.2 fraud or fraudulent misrepresentation;
  - 11.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
  - 11.3.4 defective products under the Consumer Protection Act 1987.

- 11.4 Subject to clause 11.2 and clause 11.3, the Supplier's total liability to the Client shall not exceed £1,000,000.
- 11.5 Except as expressly and specifically provided in the Contract:
- 11.5.1 the Client assumes sole responsibility for results obtained from the use of the Subscription Services and the Documentation by the Client, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Client in connection with the Subscription Services, or any actions taken by the Supplier at the Client's direction; and
- 11.5.2 the Subscription Services and the Documentation are provided to the Client on an "as is" basis.
- 11.6 This clause 11.6 sets out specific heads of excluded loss and exceptions from them:
- 11.6.1 Subject to clause 11.2 and clause 11.3, clause 11.6.3 identifies the kinds of loss that are not excluded. Subject to that, clause 11.6.2 excludes specified types of loss.
- 11.6.2 The following types of loss are wholly excluded:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of use or corruption of software, data or information;
  - (f) loss of or damage to goodwill; and
  - (g) indirect or consequential loss.
- 11.6.3 The following types of loss and specific loss are not excluded:
- (a) sums paid by the Client to the Supplier pursuant to the Contract, in respect of any Services not provided in accordance with the Contract;
  - (b) wasted expenditure;
  - (c) additional costs of procuring and implementing replacements for, or alternatives to, Services not provided in accordance with the Contract. These include consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials; and
  - (d) losses incurred by the Client arising out of or in connection with any third party claim against the Client which has been caused by the act or omission of the Supplier. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by subcontractors, the Supplier's personnel, regulators and customers of the Client.

- 11.6.4 The Supplier has given commitments as to compliance of the Services with relevant descriptions and specifications provided in the Supplier Proposal. As a result, all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract.
- 11.7 This clause 11 shall survive termination of the Contract.
- 12. Termination**
- 12.1 Subject to clause 12.2, the initial fixed term of the Contract shall be defined and detailed within the Supplier Proposal ("**Initial Term**"). After the Initial Term, the Contract will automatically renew for a period equal to the Initial Term and will continue to do so at the end of each subsequent term, unless not less than 1 months' notice is served in writing by either party to terminate the Contract, such notice to expire at the end of the Initial Term or at the end of any subsequent term. Upon renewal for any additional period, a minimum increase of 3.5% will be applied to the charges for the Services.
- 12.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 12.2.1 the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- 12.2.2 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), obtaining a moratorium, 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;
- 12.2.3 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; or
- 12.2.4 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 12.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Client if:
- 12.3.1 the Client fails to pay any amount due under the Contract on the due date for payment; or
- 12.3.2 there is a change of Control of the Client.
- 12.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Client and the Supplier if the Client fails to pay any amount due under the Contract on the due date for payment, the Client becomes subject to any of the events listed in clause 12.2.2 to clause 12.2.4, or the Supplier reasonably believes that the Client is about to become subject to any of them.

### **13. Consequences of termination**

- 13.1 On termination of the Contract the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt.
- 13.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 13.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

### **14. Force majeure**

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 3 weeks, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.

### **15. General**

#### **15.1 Assignment and other dealings**

- 15.1.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 15.1.2 The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

#### **15.2 Notices.**

- 15.2.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
  - (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 15.2.2 Any notice shall be deemed to have been received:
  - (a) if delivered by hand, at the time the notice is left at the proper address; or
  - (b) 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.
- 15.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

- 15.3 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 15.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 15.4 Waiver.
- 15.4.1 Except as set out in clause 2.6, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 15.4.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 15.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 15.6 Entire agreement.
- 15.6.1 The Contract constitutes the entire agreement between the parties.
- 15.6.2 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the Contract.
- 15.7 Third party rights.
- 15.7.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 15.7.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 15.8 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 15.9 Without prejudice to any other rights or remedies that the Supplier may have, the Client acknowledge and agree that damages alone would not be an adequate remedy for their breach of Clause 10 of these Conditions. Accordingly, the Supplier shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of Clause 10 of these Conditions.
- 15.10 Governing law. The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 15.11 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.