

## TERMS OF SERVICE

These Terms and Conditions constitute a legally binding agreement between the Client and the Supplier governing Services provided by Nine Consulting Limited, trading as "9ine".

If you do not agree to these terms or do not have authority to bind your organisation to these terms you should not accept them or use any Services offered by 9ine as to do so will constitute an acceptance of the terms and you will be contractually bound by these provisions.

### 1. DEFINITIONS

The following definitions and rules of interpretation apply in these Terms of Service: -

**Business Day:** means a day other than Saturday, Sunday or a public holiday in England.

**Client:** means the organisation purchasing the Services from the Supplier.

**Client Data:** means any data, file attachments, text, images, reports, personal information, or any other content, that is uploaded or submitted, transmitted or otherwise made available to the Supplier by the Client.

**Client Default:** arises where the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission of the Client or the Client's agents, sub-contractors or employees, or any failure by the Client to perform any relevant obligation under the Contract.

**Client Delivery Manager:** means an employee of the Supplier appointed to assist in the delivery of the Services.

**Consultant:** means an employee of the Supplier assigned to provide Services to the Client in accordance with Appendix 1.

**Contract:** means this agreement between the Client and the Supplier for the supply of Services.

**Controller:** takes the meaning given in the GDPR.

**Data Loss Event:** any event that results or may result in unauthorised access to Personal Data held by the Supplier under the Contract and/or actual or potential loss and/or destruction of Personal Data under the Contract, including any Personal Data Breach.

**Data Protection Legislation:** means the UK Data Protection Legislation, the GDPR (and any applicable national implementing laws as amended from time to time), any other applicable legislation or regulatory requirements relating to personal data and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**Data Subject:** takes the meaning given in the GDPR.

**Deliverables:** means all products and materials developed by the Supplier in any form for the purposes of delivering the Services, including without limitation, computer programs, websites, web applications (including but not limited to the 9ine App), data, diagrams, reports, templates and specifications (including drafts) whether in existence before the commencement of the Contract or not.

**Fee:** means the cost of the Services payable by the Client.

**GDPR:** means the General Data Protection Regulation (*Regulation (EU) 2016/679*).

**Intellectual Property Rights:** means any patents, rights to inventions, copyright and related rights, trademarks, trade names, business names and domain names, rights in get-up, rights in goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, topography 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.

**LED:** means the Law Enforcement Directive (*Directive (EU) 2016/680*).

**Personal Data:** takes the meaning given in the GDPR.

**Personal Data Breach:** takes the meaning given in the GDPR.

**Processor:** takes the meaning given in the GDPR.

**Proposal:** means the description of the Services to be performed by the Supplier or the allocation of resources to the Client in exchange for the Fee.

**Protective Measures:** mean appropriate technical and organisational measures which may include pseudonymising and encrypting Personal Data; ensuring the confidentiality, integrity, availability and resilience of systems and services; ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and regularly assessing and evaluating the effectiveness of any such adopted measures.

**Services:** means all services, whether or not utilising the Deliverables, performed by the Supplier for the purposes of delivering the Proposal, including but not limited to subscription services.

**Supplier:** means Nine Consulting Limited, trading as '9ine', registered in England and Wales under company number 06829839 and whose registered office is at 20 Goodwood Way, Cepen Park South, Chippenham, Wiltshire SN14 0SY. VAT Number 974558959.

**UK Data Protection Legislation:** means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation (*(EU) 2016/679*); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (*2002/58/EC*) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended.

**VAT:** means value added tax chargeable under English law for the time being and any similar additional tax.

### 2. INTERPRETATION

- 2.1. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.2. A reference to a party includes its representatives.
- 2.3. A reference to a statute or a statutory provision is a reference to it as amended or re-enacted and includes all subordinate legislation made under that statute or statutory provision.
- 2.4. 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.
- 2.5. A reference to writing or written includes email but not fax.
- 2.6. Headings do not affect the interpretation of these terms and conditions.
- 2.7. The terms in this Contract shall prevail over any inconsistent terms or conditions contained in or referred to in any other document, purchase order, confirmation of order or specification or implied by law, trade custom, practice or course of dealing. The Client's terms and conditions (if any) attached to, enclosed with, or referred to in any document shall not govern the relationship between the Client and the Supplier and will accordingly have no effect.
- 2.8. Any material variation to this Contract shall be in writing and signed by or on behalf of the parties.

### 3. APPLICATION OF THE CONTRACT

- 3.1. Where the Supplier has tendered a Proposal for the provision of services or the allocation of specific resources to the Client, the Proposal will constitute an offer by the Supplier to purchase the Services or resources specified therein subject to these terms and conditions. The execution and return of the Contract Agreement or the Supplier's commencement or execution of work pursuant to the Proposal, shall establish a contract for the supply and purchase of those Services or resources on the basis of these terms and conditions.
- 3.2. Where the Client has been receiving any of the Deliverables for a trial period, these terms and conditions apply after the expiry of that trial period and upon the commencement of the Client's subscription for the Services as described within the Proposal.

### 4. SUPPLY OF THE SERVICES

- 4.1. The Supplier shall use reasonable endeavours to supply the Services to the Client in accordance with the Proposal.
- 4.2. The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Proposal but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

- 4.3. Where the Supplier is unable to meet a performance date for the Services the Client shall be responsible for the payment of the Fee in addition to any further charges arising as a result of the additional time spent by the Supplier to deliver the Services required. The Supplier will use all reasonable endeavours to inform the Client of any expected overrun and any further charges required to be paid.
- 4.4. Where the Supplier makes a Consultant available to the Client, the Consultant shall provide the Services with all due care and skill in accordance with Appendix 1.
- 4.5. The Supplier reserves the right to amend the 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. The Supplier will endeavour to provide reasonable notice to the Client in any such event.
- 4.6. The Supplier further reserves the right to add, modify or discontinue any feature, functionality or tools within any of the Deliverables at any time, at its own discretion and without notice. The Supplier will however endeavour to inform the Client of any material adverse changes to core functionality via an online notification, announcement or email.
- 4.7. If the Client or Supplier wishes to amend the scope of the Services such changes should be requested and confirmed in writing. If the Supplier requests a change to the scope of the Services the Client shall not unreasonably withhold or delay consent to it. The Supplier is not however obliged to agree to any amendments proposed by the Client unless and until the parties have agreed the necessary variation in the Fee and any other relevant terms of the Contract necessary to take into account the changes required.
- 4.8. In the event that an amendment to the scope of Services is agreed, the Supplier shall provide written confirmation to the Client detailing:
  - (a) the estimated time it would take to implement the change;
  - (b) any variation to the Supplier's charges;
  - (c) any other impact of the change, including any impact on the Contract.
- 4.9. Where the Client subscribes to the Supplier's Data Protection Officer Essential Service (DPOE), the Client acknowledges and agrees that this is a service designed to assist and support the Client's Data Protection Officer in the performance of their obligations to the Client and that, in the provision of this DPOE service, the Supplier is not acting as the Client's Data Protection Officer and will not be liable for any penalties issued to the Client by any Data Protection Regulation Authority.

## 5. CLIENT OBLIGATIONS

- 5.1. The Client agrees that the time for payment shall be of the essence of the Contract.
- 5.2. The Client shall pay each invoice submitted by the Supplier in full and with cleared funds to the bank account nominated by the Supplier within 14 days of receipt.
- 5.3. In addition to its obligations to pay the Fee and notwithstanding anything to the contrary in any Proposal, the Client shall pay the Supplier's costs and expenses of attending hearings, giving evidence or otherwise assisting the Client in investigating and/or responding to any incident.
- 5.4. The Client shall:
  - (a) cooperate with the Supplier in all matters relating to the Services;
  - (b) 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;
  - (c) provide such access to the Client's premises and data, and such office accommodation and other facilities as may be required by the Supplier;
  - (d) be responsible (at its own cost) for preparing the client premises for the supply of the Services;
  - (e) comply with all applicable laws;
  - (f) comply with any additional obligations as set out in the Proposal.
- 5.5. In the event of a Client Default:
  - (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the 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 that the Client Default prevents or delays the Supplier's performance of any of its obligations;
  - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Supplier's failure or delay in performance of any of its obligations as a result of the Client Default;
  - (c) the Client shall pay the Supplier all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of a person and loss of opportunity to deploy resources elsewhere) subject to the Supplier confirming such costs, charges and losses to the Client in writing.
- 5.6. The Client shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of six months after the completion of the Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or subcontractor of the Supplier.
- 5.7. Any consent given by the Supplier in accordance with clause 5.6 shall be subject to the Client paying to the Supplier a sum equivalent to 100% of the Client's current annual contract, or 100% of the employee's current remuneration, whichever is greater.

## 6. CLIENT DATA

- 6.1. The Client shall retain all rights, title, interest and control of the Client Data and shall be solely responsible for any consequences associated with its use and storage by, disclosure or transmission to, the Supplier.
- 6.2. The Supplier shall not moderate the Client Data except as required for the purposes of performing the Services under the Contract.
- 6.3. The Client acknowledges and accepts that the Supplier has the right to use the Client's name and logo to identify the Client as a customer of the Supplier on the Supplier's website or in marketing materials.

## 7. CHARGES AND PAYMENT

- 7.1. All amounts payable by the Client under the Contract are exclusive of 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 at the same time as payment is due for the supply of the Services.
- 7.2. Where the Services are provided on a consultancy basis:
  - (a) the charges payable for the Services shall be calculated in accordance with the Supplier's daily fee rates as amended from time to time;
  - (b) the Supplier's daily fee rates for each individual person are calculated on the basis of a seven and a half (7.5) hour day worked on Business Days between the hours of 0800 and 1700;
  - (c) the Supplier shall be entitled to charge an overtime rate of 150% of the daily fee rate on a pro rata basis for part days or any time worked on the Services outside the hours referred to in clause 7.2(b);
  - (d) the Supplier shall invoice the Client monthly in arrears for its charges together with VAT where appropriate; and
  - (e) the Supplier shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated or ancillary expenses, and for the cost of any materials or third party services reasonably and properly required by the Supplier for the provision of the Services.
- 7.3. Where the Services are provided for a fixed price, the Fee shall be the amount agreed in the Proposal which shall be paid to the Supplier by the Client (without deduction or setoff) in instalments as set out in the Proposal. The Supplier shall invoice the Client for the instalments, together with any expenses and materials (and VAT, where appropriate) detailed in clause 7.4.
- 7.4. Any fixed price contained in the Proposal excludes:
  - (a) travelling expenses, hotel costs, subsistence, and any other associated or ancillary expenses reasonably incurred by the Supplier in connection with the provision of the Services and the cost of any materials or third party services reasonably and properly required by the Supplier for the provision of the Services; and
  - (b) VAT or any additional taxes applicable, which the Supplier shall add to its invoices at the appropriate rate.
- 7.5. Where the Client requests that the Supplier perform the Services from the Client's premises, the Supplier will charge the Client a minimum of four and a half hours plus any travel time at the Supplier's standard daily rate, as determined by the Supplier.

- 7.6. Where the Client has requested and/or requires additional support and customisation in relation to any of the Deliverables, the Supplier shall invoice, and the Client shall pay, the charges specified in the Proposal relating to such customisation (if any).
- 7.7. The Supplier reserves the right to increase the charges for the Services payable by the Client at any time upon giving 30 days prior written notice to the Client.
- 7.8. Without prejudice to any other right or remedy that the Supplier may have, if the Client fails to make a payment due to the Supplier under the Contract by the due date then, the Supplier may charge interest on the overdue sum from the due date, whether before or after judgment. Such interest under this clause 7.8 shall accrue at an annual rate of 8% above the base lending rate from time to time of HSBC Bank Plc., accruing on a daily basis and being compounded quarterly until the overdue sum is paid. The Supplier may suspend all Services until the overdue sum is paid and may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.9. All amounts due from the Client 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).
- 7.10. The Supplier may, without prejudice to any other rights it might have, set off any liability of the Client to the Supplier against any liability of the Supplier to the Client.
- 7.11. Notwithstanding any other provision within the Contract, and without prejudice to any right to claim interest in law or under the Contract, all payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract.

## **8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1. All Intellectual Property Rights and all other rights in the Deliverables arising out of or in connection with the Services shall be owned by the Supplier.
- 8.2. This clause 8 shall survive the termination of the Contract howsoever arising.

## **9. LICENCE**

- 9.1. The Supplier grants to the Client, for the duration of the Contract, a non-exclusive, non-transferable, worldwide licence to such an extent as is necessary to enable the Client to make reasonable use of the Deliverables for the purpose of the Services as envisaged by the parties during the term of the Contract.
- 9.2. If the Supplier terminates the Contract under clause 16 the licence granted by clause 9.1 will automatically terminate.
- 9.3. The Client shall not sub-license, assign or otherwise transfer the rights granted by clause 9.1.
- 9.4. Except as expressly permitted in these terms, the Client shall not allow any personnel or third party to give, sell, rent timeshare, sublicense, disclose, publish, assign, market, resell, display, transmit, broadcast, transfer or distribute any part of the Services and/or the Deliverables to any third party.
- 9.5. The Supplier shall take all reasonable care to ensure the accuracy of information within the Deliverables but it makes no representations, warranties or guarantees, whether express or implied, that the content is accurate, complete or up to date.

## **10. CHANGE CONTROL**

- 10.1. The Supplier may make changes to the Deliverables as necessary but will endeavour to inform the Client with notice as appropriate in respect of material changes either by displaying a prominent notice within the Deliverables or by an online notification, announcement or email. The Client's continued use of the Services and/or Deliverables after the changes have been made will constitute the Client's acceptance of those changes.

## **11. DATA PROTECTION**

- 11.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace a party's obligations or rights under the Data Protection Legislation.
- 11.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Supplier is the Processor of the Personal Data under the Contract, as detailed in Appendix 2 and as reasonably required for the performance of the Services or as required by law.
- 11.3. Without prejudice to the generality of condition 11.1, the Client shall, unless prohibited by law:
  - (a) ensure that it has all necessary and appropriate consents and notices in place to enable the lawful transfer of Personal Data to the Supplier for the purposes of performing the Services under the Contract. This may include informing individuals about the Supplier processing their personal data and providing any information that is required by law;
  - (b) provide such information and assistance as may reasonably be requested by the Supplier in relation to the personal data of the Client's employees, staff, pupils, parents of pupils and other individuals.
- 11.4. Without prejudice to the generality of clause 11.1, the Supplier shall, in relation to any Personal Data processed in connection with its obligations under the Contract and for the purposes of performing the Services:
  - (a) process the Personal Data in accordance with the instructions of the Client unless the Supplier is required by law to otherwise process that data, in which case the Supplier shall promptly notify the Client of this before performing the processing required by that law unless such notification is prohibited by law;
  - (b) notify the Client immediately if it considers that any of the Client's instructions infringe the Data Protection Legislation;
  - (c) ensure that it has in place Protective Measures, reviewed and approved by the Client as appropriate, to protect against a Data Loss Event taking into account the nature of the Personal Data to be protected, the harm that might result from a Data Loss Event, the state of technological development and the cost of implementing any such measures.
  - (d) ensure that all personnel who have access to and/or process Personal Data under the Contract only process that data for the purposes of performing the Services and that they will keep the Personal Data confidential; and
  - (e) not transfer any Personal Data outside of the European Economic Area unless the following conditions are fulfilled: (i) the Client or the Supplier has provided appropriate safeguards in relation to the transfer; (ii) the Data Subject has enforceable rights and effective legal remedies; (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and (iv) the Supplier complies with reasonable instructions notified to it in advance by the Client with respect of the processing of the Personal Data.
  - (f) notify the Client without undue delay if it: (i) receives a request from a Data Subject under the Data Protection Legislation; (ii) receives a request to rectify, block or erase any Personal Data; (iii) receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation; (iv) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this contract; (v) receives a request from any third party for disclosure of Personal Data where compliance with such a request is required or purported to be required by law; or (vi) becomes aware of a Data Loss Event relating to the Personal Data being processed under the Contract.
  - (g) taking into account the nature of the processing, assist the Client in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 11.4(f) concerning the Personal Data being processed under the Contract (and insofar as possible within the timescales reasonably required by the Client) including by promptly providing: (i) the Client with full details and copies of the complaint, communication or request; (ii) such assistance as is reasonably requested by the Client to enable the Client to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation; (iii) the Client, at its request, with any Personal Data it holds in relation to a Data Subject; (iv) assistance as requested by the Client following any Data Loss Event; (v) assistance as requested by the Client with respect to any request from the Information Commissioner's Office, or any consultation by the Client with the Information Commissioner's Office.
  - (h) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the Contract unless the Supplier is required by law to retain the Personal Data;
  - (i) maintain complete and accurate records and information to demonstrate its compliance with Data Protection Legislation;
  - (j) provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessments relating to the processing of Personal Data under the contract prior to any processing; and
  - (k) allow for audits of its data processing activities carried out in behalf of the Client either by the Client or the Client's designated auditor;
- 11.5. The Supplier's obligation to notify under clause 11.4(f) shall include the provision of further information to the Client in phases, as details become available.

- 11.6. The Client consents to the Supplier appointing third party processors. The Supplier shall remain liable to the Client for acts and omissions of those third party processors in the performance of their obligations concerning the Personal Data being processed under this Contract to the extent detailed in clause 14.
- 11.7. Each party shall designate its own data protection officer if required by Data Protection Legislation.
- 11.8. Either party may, at any time on not less than 30 days' notice, revise this clause 11 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 incorporated by attachment to the Contract).

## **12. CONFIDENTIALITY**

- 12.1. The Client shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Client by the Supplier or its agents, and any other Confidential Information concerning the Client's business or its products which the Client may obtain. The Client shall restrict disclosure of such confidential material to its employees, agents or subcontractors on a need to know basis and shall ensure that such employees, agents of sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Client.
- 12.2. Each party may be given access to Confidential Information from the other party in order to perform its obligations under these terms and conditions. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act of omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - (d) is independently developed by the receiving party where such independent development can be shown by written evidence.
- 12.3. Subject to clause 12.5, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of these terms and conditions.
- 12.4. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the Contract.
- 12.5. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible, and, where notice of disclosure is not prohibited and is given in accordance with this clause 12.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 12.6. All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Client shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Client in safe custody at its own risk and maintained and kept in good condition by the Client until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.
- 12.7. For the purposes of this clause 12, 'Confidential Information' means:
- (a) the information described in clause 12.1,
  - (b) any information or data relating to the staff, employees, pupils and other individuals held by or on behalf of the Client and made available to, or otherwise accessible by, the Supplier, in any form under the Contract, and
  - (c) any commercial, financial or technical information relating to the business or prospective business of the other, any information relating to a party's suppliers, customers, employees or agents obtained by one party in any form or medium pursuant to a purchase order which is expressly marked as confidential or which a reasonable person would reasonably regard as being confidential together with any reproductions of this information.
- 12.8. This clause 12 shall survive the termination of the Contract howsoever arising.

## **13. SECURITY**

- 13.1. The Client is responsible for configuring its own information technology, virus protection software, computer programmes and platform to ensure the security and integrity of the Deliverables .
- 13.2. The Client shall not circumvent, disable or otherwise interfere with any security-related features of the Deliverables or features that prevent or restrict the use of copying any content or that enforce limitations on use, nor reverse engineer, decompile or disassemble, decrypt or attempt to derive the source code of any of the Deliverables or any components thereof.
- 13.3. The Client shall not copy, modify, translate, patch, improve, alter, change the Deliverables or any part thereof or create any derivative works or take any action that imposes or may impose (at the Supplier's sole discretion) an unreasonable or disproportionately large load on the infrastructure that supports the Deliverables.
- 13.4. The Client shall not interfere or attempt to interfere with the integrity or proper working of the Deliverables, or any related activities.
- 13.5. The Client shall not remove, deface, obscure or alter the identification, attribution, copyright, trademarks or other proprietary rights of the Supplier in respect of the Deliverables, or use or display the Supplier's logo without the Supplier's prior written approval.
- 13.6. The Client shall not use the Deliverables for competitive purposes, including to develop or enhance a competing service or product or encourage or assist any third party to do so.
- 13.7. The Supplier reserves the right to temporarily suspend the Client's use of or access to the Deliverables in the event that the Supplier considers the manner in which the Client is using these creates a security risk or may cause harm to the Supplier or another third party or could create a liability for the Supplier in any way.
- 13.8. The Supplier shall take all reasonable care to protect the integrity and security of the Deliverables but it does not warrant that access or the use thereof will be uninterrupted, free from viruses or other harmful code and accepts no responsibility for failures, interception, alteration, loss or other damages that the Client may suffer as a result of events which are beyond the Supplier's control.

## **14. LIMITATION OF LIABILITY**

- 14.1. The following provisions set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, third party processors and subcontractors) to the Client in respect of:
- (a) any breach of the Contract;
  - (b) any act or omissions of the Supplier carried out at the request of, or on behalf of, the Client or in compliance with the Client's instructions;
  - (c) any use of the Services, the Deliverables or any part of them by the Client; and
  - (d) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 14.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 14.3. Nothing in these conditions excludes the liability of the Supplier for death or personal injury caused by the Supplier's negligence, or for fraud or fraudulent misrepresentation.
- 14.4. Subject to clauses 14.2 and 14.3:
- (a) the Supplier shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for any direct or indirect: (i) loss of profits; (ii) loss of sales or business; (iii) loss or depletion of goodwill or similar losses; (iv) loss of anticipated savings; (v) loss of goods; or (vi) loss of agreements or contracts; or (vii) loss of use; or (viii) loss or corruption of software, data or information; or (ix) any fines, penalties or other sanctions or conditions imposed on the Client; or (x) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
  - (b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price the Client paid for the Services in the preceding 3 months.
- 14.5. Where the Supplier, in the performance of the Services, identifies (i) an actual or suspected breach of law, regulation or policy by the Client or any of its employees, subcontractors, agents, students/ pupils or individuals or entities retained by the Client; or (ii) any event or circumstances that may adversely affect the Client's business, reputation or status, the Client shall be solely responsible for any acts or omissions in response to these and the Supplier shall not be liable for any losses, liabilities, costs or expenses suffered or incurred by the Client.

- 14.6. The Client agrees that the Supplier's ability to perform any investigatory, testing, risk assessments or disaster recovery in relation to the circumstances described in clause 14.5 is constrained by the time the Supplier has to perform the Services and the information made available to it, and that additional time for review and assessment and/or access to additional information may result in additional/different results. The Supplier therefore makes no representations or warranties that the Services will meet the Client's requirements in this regard or that the performance of the Services will identify the cause of, or any further information about, the circumstances in clause 14.5.
- 14.7. This clause 14 shall survive the termination of the Contract howsoever arising.

## **15. INDEMNITY**

- 15.1. The Client hereby agrees to indemnify, defend and hold harmless the Supplier, its officers, directors, employees and agents from and against any and all claims, damages, obligations, liabilities, losses, reasonable expenses or costs incurred as a result of any third party claim arising out of the Client's breach of Contract or the use of Client Data by the Supplier in the performance of its obligations under the Contract.
- 15.2. In addition to clause 15.1, in respect of the Suppliers DPOE service referenced in clause 4.11, the Client agrees to indemnify and hold harmless the Supplier from and against any and all actions, claims, investigations, proceedings, damages, losses, costs and expenses (including reasonable legal costs) applied to, imposed on, or suffered or incurred by the Supplier if the Supplier is (i) alleged and/or found to be acting as the Client's Data Protection Officer or (ii) otherwise held liable for any breach by the Client's Data Protection Officer.

## **16. TERM & TERMINATION**

- 16.1. Subject to clauses 16.2 and 16.3, the Contract shall remain in full force and effect until the expiration of the Services. Upon termination, all rights granted for the use of the Deliverables shall terminate. It is therefore the Client's sole responsibility to export the Client Data prior to the termination or expiration of the Services.
- 16.2. Where the Client purchases a subscription service from the Supplier, the term shall be determined within the Proposal, and shall renew for successive periods of 12 months unless terminated by either party giving written notice of no less than 90 days of the current term.
- 16.3. Notwithstanding any other right or remedy available to it, either party may terminate the Contract with immediate effect and without liability to the other if:
- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party after being notified in writing to do so;
  - (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party;
  - (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);
  - (d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets;
  - (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt;
  - (f) the other party ceases, or threatens to cease, to trade; or
  - (g) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 16.4. Notwithstanding any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving notice to the Client if the Client fails to pay any amount due under the Contract on the due date for payment.
- 16.5. Termination of the Contract, howsoever arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision that expressly or by implication is intended to have effect after termination or expiry of the Contract.

## **17. FORCE MAJEURE**

- 17.1. The Supplier shall have no liability whatsoever to the Client if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, shortages, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, denial of service attacks, interruption or failure of the internet, failures in third party hosting services, act of God, pandemics or health crisis, war, riot, civil commotion, terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers, sub-contractors or third party processors.

## **18. WAIVER**

- 18.1. A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 18.2. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

## **19. SEVERANCE**

- 19.1. These terms shall be enforced to the fullest extent permitted under applicable law. If any provision or part-provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

## **20. STATUS OF PRE-CONTRACTUAL STATEMENTS**

- 20.1. Each of the parties acknowledge and agree that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of these terms and conditions other than as expressly set out in the Contract.

## **21. ASSIGNMENT**

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

## **22. NO PARTNERSHIP OR AGENCY**

- 22.1. Nothing in the Contract is intended to or shall operate or be deemed to establish any partnership, joint venture, fiduciary or employment relationship between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **23. THIRD PARTY RIGHTS**

- 23.1. The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, any other party.

**24. NOTICES**

24.1. Any notice under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its registered office as set out in the Contract, or such other address as may have been notified by that party for such purposes. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not during business hours, at 9.00 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

**25. GOVERNING LAW AND JURISDICTION**

25.1. The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England.

25.2. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

**APPENDIX 1**

1. The Supplier shall ensure that the Consultant shall :-
  - a. provide the Services with all due care, skill, ability and use their best endeavours to promote the interests of the Client; and
  - b. unless the Consultant is prevented by ill health, injury or accident, devote time as directed by the Client in the carrying out of the Services together with such additional time, if any, as may be necessary for the proper performance of the Services.
2. If the Consultant is unable to provide the Services due to ill health, illness, injury or accident, the Supplier shall advise the Client of that fact as soon as reasonably practicable.
3. The Supplier may on notice to the Client appoint a suitably qualified and skilled substitute to perform the Services.
4. Unless otherwise agreed by the parties, the provisions of clauses 4.7 and 4.8 of the Contract shall not apply to the Services for which this Appendix applies.

**APPENDIX 2**

1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Supplier is the Processor.
2. The Supplier will comply with any further instructions given by the Client with respect to the processing of Personal Data under the Contract.
3. Any such further instructions will be incorporated into this Appendix 2, as appropriate.

**Subject Matter of the Processing**

4. The subject matter of the Processing is the provision of the Services described in clause 1 of the Contract.

**Duration of the Processing**

5. The Personal Data will only be processed for the duration of the Contract unless required longer for retention purposes or as required by law.

**Nature and Purpose of the Processing**

6. The Supplier is authorised to process such Personal Data as is necessary to enable it to comply with its obligations under the Contract and will include any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means).

**The Type of Personal Data being Processed**

7. This will include but is not limited to: -

Name, address, date of birth, telephone number, email address, unique identification number, photographs, age, nationality, race, ethnic origin, religious or philosophical beliefs, biometric/genetic data, gender, student assessments, academic records/education history, child protection information, health data/medical records, counselling records, political opinions, financial aid, bank details, CCTV images, trade union membership, data relating to criminal convictions or offences, next of kin, nationality, qualifications, occupational health records, pension records, employment records, car registrations, payroll information.

**Categories of Data Subject**

8. This will include but is not limited to: -

Staff (including volunteers, agents and temporary workers), children under the age of 18 years (including students and pupils), students and pupils over the age of 18, parents/legal guardians of students and pupils, suppliers, enquirers, complainants, professional advisors and consultants, representatives of other organisations.

**Return and Destruction of Data**

9. At the written direction of the Client, all Personal Data will be deleted or returned to the Client on termination of the Contract unless the Supplier is required by law to retain the Personal Data