

# TERMS & CONDITIONS FOR THE PROVISION OF SERVICES

## BACKGROUND AND CONTEXT

These terms and conditions apply to the provision of any Services provided by and/or detailed in a quotation (“Quotation”) by CHANNEL ADVANTAGE LIMITED (trading as Retial7) incorporated and registered in England and Wales with company number 03016118 whose registered office is at Atlas House, Third Avenue, Globe Park, Marlow, Buckinghamshire SL7 1EY or any Affiliate of Channel Advantage Limited (“the Supplier”) and any other party (“the Client”) and constitute the agreement between the parties (“agreement”).

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## 1. INTERPRETATION

The following definitions and rules of interpretation apply to this agreement.

Definitions:

<b>"Acceptance Tests"</b>	the tests of the Software to be agreed between the parties in accordance with clause 7.1.5.
<b>"Agreement Commencement Date"</b>	The date set out in clause 4.
<b>"Affiliate"</b>	any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.
<b>"Brand Safety Policy"</b>	the Supplier's brand safety policy available from time to time from <a href="http://www.hpsgroup.co.uk/policy">www.hpsgroup.co.uk/policy</a> .
<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>"Change"</b>	any change to the Quotation.
<b>"Charges"</b>	the charges as specified in the Quotation payable by the Client or a Client Affiliate for the supply of the Services by the Supplier.
<b>"Client Account Manager"</b>	any of the account managers, account directors, associate directors and directors of the Client as notified to the Supplier from time to time.
<b>"Client Affiliate"</b>	an Affiliate of the Client.
<b>"Client Background IPRs"</b>	all Intellectual Property Rights in the Client Materials.
<b>"Client Materials"</b>	all materials, equipment and tools, drawings, specifications and data supplied by the Client to the Supplier.
<b>"control"</b>	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression <b>of control</b> shall be construed accordingly.

<b>"Data Controller"</b>	has the meaning set out in section 1(1) of the Data Protection Act 1998.
<b>"Data Subject"</b>	an individual who is the subject of Personal Data.
<b>"Defect"</b>	an error in the Software that causes it to fail to operate substantially in accordance with the Technical Specification.
<b>"Deliverables"</b>	all documents, products and materials developed by the Supplier or its staff, agents, contractors and employees as part of or in relation to the Products in any form exclusively for the Client, excluding Software.
<b>"Delivery Location"</b>	the delivery location specified in the Quotation.
<b>"Delivery Time"</b>	the delivery time specified in the Quotation.
<b>"Free Open Source Software Policy"</b>	the Supplier's free open source software policy available from <a href="http://www.hpsgroup.co.uk/policy">www.hpsgroup.co.uk/policy</a> from time to time.
<b>"Foreground IPRs"</b>	all Intellectual Property Rights in the Products and Deliverables, other than the Supplier Background IPRs.
<b>"Force Majeure Event"</b>	shall have the meaning as set out in clause 20.
<b>"Intellectual Property Rights"</b>	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks 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, source files, 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>"Performance Dates"</b>	the performance dates specified in the Quotation.
<b>"Personal Data"</b>	has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, in respect of which the Client is the Data Controller and in relation to which the Supplier is providing services under this agreement.
<b>"Processing and process"</b>	have the meaning set out in section 1(1) of the Data Protection Act 1998.

<b>"Products"</b>	products being provided by the Supplier to the Client exclusively for the Client as part of the Services.
<b>"Project Manager"</b>	as notified from time to time.
<b>"Services"</b>	the services, including without limitation any Products, Deliverables, and/or Software to be provided by the Supplier to the Client as set out in the Quotation.
<b>"Software"</b>	software programs, websites and web applications developed by the Supplier being licensed to the Client as part of the Services, excluding Service Files.
<b>"Supplier Account Manager"</b>	any of the account managers, account directors, associate directors and directors of the Supplier as notified to the Client from time to time.
<b>"Supplier Background IPRs"</b>	all Intellectual Property Rights that are owned by or licensed to the Supplier and which are or have been developed independently of the Quotation in each case either subsisting in the Products and Deliverables or otherwise necessary or desirable to enable a Client to receive and use the Services.
<b>"Technical Specification"</b>	the specification of the Software contained in the Quotation.

- 1.1.** clause, schedule and paragraph headings shall not affect the interpretation of this agreement or any quotation.
- 1.2.** a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3.** a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4.** 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 and a subsidiary shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of:
- 1.4.1. another person (or its nominee) by way of security or in connection with the taking of security; or
  - 1.4.2. its nominee.
- 1.5.** In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 1.6.** Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.7.** Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8.** A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9.** A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.
- 1.10.** A reference to writing or written includes fax and email.
- 1.11.** Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12.** A reference to this agreement or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.13.** References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.14.** 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. AGREEMENT**

**2.1.** This agreement shall apply to any Quotation entered into between any Supplier or Supplier Affiliate with any Client or Client Affiliate.

**2.2.** This agreement governs the overall relationship of the parties in relation to the Services provided by the Supplier to the Client and Client Affiliates.

## **3. CONFLICT**

**3.1.** Except as expressly stated in any Quotation, if there is an inconsistency between any of the provisions of this agreement and the provisions of any Quotation, the provisions of this agreement shall prevail.

## **4. COMMENCEMENT AND DURATION**

**4.1.** This agreement shall commence and the Client shall be deemed to have accepted these Terms and Conditions when the Client accepts the Quotation or from the date of any performance of the Services (whichever happens earlier) and this agreement shall continue until terminated in accordance with these terms.

## **5. SUPPLY OF ALL SERVICES**

**5.1.** the Supplier shall supply Services in accordance with the Quotation.

**5.2.** The Supplier shall provide Services from the date the agreement comes into force in accordance with its terms.

**5.3.** The Supplier shall use all reasonable endeavours to meet any Performance Dates.

**5.4.** Subject to clause 6 in relation to Products only, the Services shall be deemed to be accepted on the earlier of:

5.4.1. the Client issuing a written acceptance form; or

5.4.2. the expiry of 30 days' after delivery or performance.

**5.5.** Subject to clause 6 in relation to Products only, if the Client gives notice in writing to the Supplier within 30 days' of delivery that some or all of the Services are defective, the Supplier shall be given reasonable opportunity to examine the Services and shall, at its option, repair or replace the defective Services, or refund the Charges for the Services.

**5.6.** In supplying the Services, the Supplier shall:

5.6.1. perform the Services with the level of care, skill and diligence in accordance with good practice in the Supplier's industry, profession or trade;

5.6.2. co-operate with the Client in all matters relating to the Services, and comply with all instructions of the Client;

5.6.3. use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled;

5.6.4. ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise including without limitation, acting in accordance with the Supplier's Free Open Source Software Policy) it may require and which are necessary to enable it to comply with its obligations in the Quotation;

- 5.6.5. ensure that the Services will materially conform with all descriptions and specifications set out in the Quotation and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Client;
- 5.6.6. provide all equipment, tools, vehicles and other items required to provide the Services;
- 5.6.7. ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of the satisfactory quality and are free from defects in workmanship, installation and design;
- 5.6.8. comply with all applicable laws, statutes and regulations;
- 5.6.9. observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client 's premises;
- 5.6.10. notify the Client in writing immediately upon the occurrence of a change of control of the Supplier; and
- 5.6.11. comply with its Brand Safety Policy and shall therefore have no liability for Deliverables or Software appearing on third party websites.

**5.7. Where the Services include running competitions:**

- 5.7.1. the Client is responsible for approving the competition terms of and conditions (including obtaining its own legal advice);
- 5.7.2. the Supplier will run competitions in accordance with the English law. Account will only be taken of the laws of any other jurisdiction where this is expressly state in the Quotation and subject to the Client paying any costs incurred by the Supplier to obtain local law advice; and
- 5.7.3. unless expressly stated in the Statement of Work the Supplier may charge an additional fee for running a competition at its standard rates in force from time to time.

## **6. SUPPLY OF PRODUCTS**

**6.1. In addition to the obligations in clause 5:**

- 6.1.1. the Supplier shall deliver the Products and where relevant, Deliverables to the Delivery Location at the Delivery Time. The Delivery Time is an approximate only, and is not of the essence. The Supplier shall not be liable for any delay in the delivery of the Products and Deliverables that is caused by a Force Majeure Event or the Client's failure to provide the Supplier with adequate instructions that are relevant for the supply of the Products and Deliverables
- 6.1.2. the cost and charges of any packaging, insurance and transport of the Deliverables, shall be agreed between the parties and set out in the Quotation;
- 6.1.3. if the Client fails to accept delivery of the Products and Deliverables at the Delivery Time, then, except where such failure is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under this agreement or the Quotation, the Supplier shall:
  - 6.1.3.1. suspend supply of the Products and charge the Client for any costs and expenses; and
  - 6.1.3.2. store the Deliverables until delivery takes place, and charge the Client for all related costs and expenses (including insurance);

- 6.1.4. If the Supplier is delivering the Products and/or Deliverables by instalments, any delay in delivery or defect in an instalment shall not entitle the Client to cancel any other instalment; and
- 6.1.5. the Supplier shall ensure that all Products and Deliverables shall be fit for any purpose expressly made known to the Supplier by the Client.

**6.2.** The Products and/or Deliverables shall be deemed to be accepted on the earlier of:

- 6.2.1. the Client issuing a written acceptance form; or
- 6.2.2. the expiry of 30 days' after delivery.

If the Client gives notice in writing to the Supplier within 30 days of delivery that some or all of the Products and/or Deliverables are defective, the Supplier shall be given reasonable opportunity to examine the Products and/or Deliverables and shall, at its option, repair or replace the defective Products and/or Deliverables, or refund the Charges for the Products and/or Deliverables.

**6.3.** Provided always that the Supplier complies with its obligations under clauses 6.1 and 6.2, the Client shall have no other recourse against the Supplier for any failure to deliver.

## **7. SUPPLY OF SOFTWARE**

**7.1.** In addition to the obligations in clause 5:

- 7.1.1. the Supplier shall deliver the Software to the Client at the Delivery Location at the Delivery Time;
- 7.1.2. the Delivery Time is an approximate only, and is not of the essence. The Supplier shall not be liable for any delay in the delivery of the Software that is caused by a Force Majeure Event or the Client's failure to provide the Supplier with adequate instructions that are relevant for the supply of the Software;
- 7.1.3. if the Client fails to accept delivery of the Software at the Delivery Time, then, except where such failure is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under this agreement or the Quotation, the Supplier shall keep the Software until delivery takes place;
- 7.1.4. if the Supplier is delivering the Software by instalments, any delay in delivery or defect in an instalment shall not entitle the Client to cancel any other instalment;
- 7.1.5. in supplying the Software, in addition to complying with clause 5, the Supplier shall ensure that all Software is fit for any purpose expressly or impliedly made known to the Supplier by the Client;
- 7.1.6. no later than 10 days' after the date of the Quotation, the Supplier and the Client shall agree the acceptance criteria and test data for the Acceptance Tests for the Software. These criteria and data shall be such as are reasonably required to show that the Software complies with the Technical Specification;
- 7.1.7. the Client shall carry out the agreed Acceptance Tests for the Software as soon as possible after the Delivery Date and shall within 30 days of delivery, notify the Supplier of any Defects identified;
- 7.1.8. the Supplier shall make reasonable efforts to correct all Defects within a reasonable time period; and
- 7.1.9. the Software shall be deemed to be accepted on the earlier of:

- 7.1.9.1. the Client issuing a written acceptance form; or



7.1.9.2. the expiry of 30 days' after the Defects have been corrected.

## **8. TITLE AND RISK**

### **8.1. Risk in:**

- 8.1.1. the Products;
- 8.1.2. the Deliverables; and
- 8.1.3. any tangible media on which the Software is delivered shall pass to the Client on delivery

**8.2.** Title to the Deliverables shall not pass to the Client until the Supplier receives payment in full for the Deliverables and all other sums that are or that become due to the Supplier under that Quotation.

### **8.3.** Until title to the Deliverables has passed to the Client, the Client shall:

- 8.3.1. store the Deliverables separately from all other goods held by the Client so that they remain readily identifiable as the Supplier's property;
- 8.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to those Deliverables; and
- 8.3.3. maintain those Deliverables in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Supplier.

## **9. CHARGES AND PAYMENT**

**9.1.** In consideration for the provision of the Services, the Client shall pay the Supplier the Charges in accordance with the Quotation. The Charges shall be paid in pounds sterling.

### **9.2.** Unless otherwise agreed in the Quotation, the Supplier shall invoice the Charges to the Client:

- 9.2.1. on completion if the Services continue for less than one month; or
- 9.2.2. at monthly intervals if the Services continue for more than one month. the Supplier

**9.3.** Unless excluded in any Quotation, the Supplier may increase the Charges no more than once in any 12-month period, always provided that the first such increase shall fall after the first anniversary of the commencement of the Quotation. The Supplier shall give the Client not less than 3 months' notice of any increase. Any such increase shall not exceed the percentage increase, over the last 12 months for which figures are available, in the UK All Items Retail Prices Index or such replacement index as the parties may agree. Any increase in the Charges shall apply with effect from expiry of the Supplier's notice.

**9.4.** In the event that the Client does not instruct the Supplier to commence providing any Services within 8 weeks of the date on which it was agreed that the Supplier should commence providing those Services then the Supplier may increase the Charges to reflect any increase in costs that the Supplier will suffer as a result of the delay.

**9.5.** The Supplier reserves the right to demand advanced payment in full to cover any disbursements or expenses incurred by the Supplier including postage or down payments to third party suppliers.

**9.6.** Unless otherwise agreed in the Quotation, the Client shall reimburse to the Supplier, in addition to the Charges, the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably and properly incurred by the Supplier's employees, subcontractors and agents in the provision of the Services. Any such reimbursement shall be in accordance with any expenses policy, as set out in the Quotation or agreed between the parties. If no expenses policy is in place, the Client shall reimburse the Supplier for all reasonable expenses.

**9.7.** The Client shall pay each invoice which is properly due and submitted to it by the Supplier, within 30 days of receipt, to a bank account nominated in writing by the Supplier. Time for payment shall be of essence to the Quotation.

**9.8.** All amounts payable by the Client are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Quotation 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.

**9.9.** If the Client fails to make any payment due to the Supplier under the Quotation by the due date for payment, then, without limiting the Supplier's remedies under clause 16, the Client shall pay interest on the overdue amount at the rate of 4% per annum above Lloyds Bank 's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.

**9.10.** Where the parties have agreed that the Client is to make payments by instalments, if the Client fails to make any single payment due to the Supplier under the Quotation by the due date for payment, then, without limiting the Supplier's remedies under clause 16, the Supplier shall have the authority to:

9.10.1. invoice the Client for all Charges under the Quotation and payment must be made in accordance with clause 9.6; and

9.10.2. suspend Services.

**9.11.** All amounts due under the Quotation 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).

**9.12.** Any Charges quoted in any samples, drawings, descriptive matter or advertising issued by the Supplier, are published for the sole purpose of giving an approximate idea of the Charges and shall not form part of the Quotation or have any contractual force.

**9.13.** Where multiple activities are required as part of an overall project, each completion of Service(s) or delivery of goods shall be deemed to arise from a separate contract. Any invoice for successful delivery or completion of agreed activities shall be payable in full, in the normal way, without reference to any other instalment under any other contract notwithstanding any defect or default in the delivery or completion of any other instalment which will be dealt with as a separate and unrelated issue.

## **10. CLIENT'S OBLIGATIONS**

**10.1.** the client shall:

10.1.1. co-operate with the Supplier in all matters relating to the Services and appoint a Project Manager. The Client shall use all reasonable endeavours to ensure that the same person acts as Project Manager throughout the term of this agreement;

- 10.1.2. provide such access to the Client's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with the Client in advance, for the purposes of the Services;
- 10.1.3. provide such information as the Supplier may reasonably request and the Client considers reasonably necessary, in order to carry out the Services in a timely manner. If the Client fails to provide such information, the Supplier shall suspend the Services until all reasonably necessary information is provided. In the event that the Client fails to provide the necessary information, the Supplier shall continue to invoice in accordance with clause 9 and will request money on account for performance of the Services;
- 10.1.4. inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Client's premises; and
- 10.1.5. comply with all Supplier policies as stored here [www.hpsgroup.co.uk/policy](http://www.hpsgroup.co.uk/policy), in each case the Supplier may update the policies from time to time

**10.2.** If the Supplier's performance of its obligations under any Quotation is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay.

## **11. SOFTWARE LICENSE**

**11.1.** In consideration for the Charges paid by the Client to the Supplier, the Supplier grants to the Client a non-exclusive licence to use the Software for the term of this agreement.

**11.2.** In relation to the scope of use:

- 11.2.1. the Client may not use the Software for purposes other than those specified in the Quotation unless they have obtained prior written consent of the Supplier, and the Client acknowledges that additional fees may be payable on any change of use approved by the Supplier;
- 11.2.2. except as expressly stated in this clause 11, the Client has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Client, unless the Supplier is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Client shall request the Supplier to carry out such action or to provide such information (and shall meet the Supplier's reasonable costs in providing that information) before undertaking any such reduction.

**11.3.** The Client may not use any such information provided by the Supplier or obtained by the Client during the licence period to create any software whose expression is substantially similar to that of the Software not use such information in any manner which would be restricted by any copyright subsisting in it.

**11.4.** The Client shall not:

- 11.4.1. sub-license, assign or novate the benefit or burden of this licence in whole or in part;
- 11.4.2. allow the Software to become the subject of any charge, lien or encumbrance; and

- 11.4.3. deal in any other manner with any or all of its rights and obligations under this agreement, without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed.

## **12. INTELLECTUAL PROPERTY IN SOFTWARE**

**12.1.** The Intellectual Property Rights in the Software belong and shall belong to the Supplier throughout the duration of this agreement. The Supplier grants a non-exclusive licence to the Client for use of the Software and the Supplier indemnifies the Client for any infringement of a third party's Intellectual Property Rights arising out of the Client's use of the Software.

**12.2.** The Client acknowledges that all Intellectual Property Rights in the Software belong and shall belong to the Supplier, and the Client shall have no rights in or to the Software other than the right to use it in accordance with the terms of the licence in clause 11.

**12.3.** The Supplier undertakes at its own expense to defend the Client or, at its option, settle any claim or action brought against the Client alleging that the possession or use of the Software (or any part thereof) in accordance with the licence granted by the Supplier infringes the UK Intellectual Property Rights of a third party ("Claim") and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Client as a result of or in connection with any such Claim. For the avoidance of doubt, this clause shall not apply where the Claim in question is attributable to possession or use of the Software (or any part thereof) by the Client other than in accordance with the terms of the licence, use of the Software in combination with any hardware or software not supplied or specified by the Supplier if the infringement would have been avoided by the use of the Software not so combined, or use of a non-current release of the Software.

**12.4.** If any third party makes a Claim, or notifies an intention to make a Claim against the Client, the Supplier's obligations under Clause 12.3 are conditional on the Client:

- 12.4.1. as soon as reasonably practicable, giving written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
- 12.4.2. not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
- 12.4.3. giving the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Client, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
- 12.4.4. subject to the Supplier providing security to the Client to the Client's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.

**12.5.** If any Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Client, the Supplier may at its sole option and expense:

- 12.5.1. procure for the Client the right to continue to use the Software (or any part thereof) in accordance with the licence;
- 12.5.2. modify the Software so that it ceases to be infringing;

- 12.5.3. replace the Software with non-infringing software; or
- 12.5.4. terminate the licence immediately by notice in writing to the Client and refund any of the Charges paid by the Client in advance as at the date of termination (less a reasonable sum in respect of the Client's use of the Software to the date of termination) on return of the Software and all copies thereof, provided that if the Supplier modifies or replaces the Software, the modified or replacement Software must comply with what is agreed between the Client and the Supplier.

### **13. INTELLECTUAL PROPERTY IN PRODUCTS AND DELIVERABLES**

**13.1.** Both the Supplier and the Client shall retain ownership of all Intellectual Property Rights in Products and Deliverables that each of them owned prior to this agreement. The Client shall own all Intellectual Property Rights in all Products and Deliverables developed by the Supplier for the Client once the Supplier has received payment in full of the Charges. The Supplier shall retain ownership of all Intellectual Property Rights in the Products and Deliverables that the Supplier develops for any purpose other than to be given to the Client.

**13.2.** The Supplier and its licensors shall retain ownership of all the Supplier Background IPRs. The Client and its licensors shall retain ownership of all Client Background IPRs and the Client shall own all Foreground IPRs. All Client Materials are the exclusive property of the Client.

**13.3.** Once the Supplier receives in full all Charges and other amounts due and payable by the Client under the Quotation, the Supplier assigns to the Client absolutely all of its rights, title and interest in the Deliverables.

**13.4.** The Client grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Foreground IPRs and the Client Background IPRs for the term of the Quotation for the purpose of providing the Services to the Client in accordance with the Quotation.

**13.5.** The Supplier shall, promptly at the Client's request, do (or procure the doing of) all such further acts and things and execute (or procure the execution of) all such other documents as the Client may from time to time require for the purpose of securing for the Client the full benefit of the Quotation, including all rights, title and interest in and to the Foreground IPRs.

**13.6.** The Supplier shall obtain waivers of any moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provision in any jurisdiction. Such waivers shall be in favour of the Client and its licensees, sub-licensees, assignees and successors in title to the Deliverables.

**13.7.** The Supplier warrants that the receipt, use and onward supply of the Services by the Client and its licensees and sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party.

**13.8.** The Supplier shall not be in breach of the warranty at clause 13.7, and the Client shall have no claim under the indemnity at clause 13.9, to the extent the infringement arises from:

- 13.8.1. any modification of the Deliverables, the Supplier Background IPRs, Foreground IPRs or Services, other than by or on behalf of the Supplier; or
- 13.8.2. compliance with the Client's specifications or instructions, where infringement could not have been avoided while complying with such specifications or instructions and provided that the Supplier shall notify the Client if it knows or suspects that compliance with such specification or instruction may result in infringement.

**13.9.** The Supplier shall keep the Client indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Client as a result of or in connection with any claim brought against the Client for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables.

**13.10.** The Client shall:

- 13.10.1. notify the Supplier in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 13.9(IPRs Claim);
- 13.10.2. allow the Supplier, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Supplier shall obtain the Client's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- 13.10.3. provide the Supplier with such reasonable assistance regarding the IPRs Claim as is required by the Supplier, subject to reimbursement by the Supplier of the Client 's costs so incurred;
- 13.10.4. not, without prior consultation with the Supplier, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Supplier considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Client into disrepute.

**13.11.** Subject to any express provision in the Quotation, the Supplier may use any work created or procured by the Supplier in the performance of the Services (including relating to the Deliverables or Products) (the Work) or any part of any Work at the discretion of the Supplier for the purpose of:

- 13.11.1. entering industry awards and competitions; or
- 13.11.2. producing case studies of Supplier's work to share with other clients, and the Client hereby grants the Supplier a perpetual worldwide royalty free licence to use any Client Background IPRs and/or Foreground IPRs in the Works for this purpose.

## **14. CHANGE CONTROL**

**14.1.** Where the Client or the Supplier sees a need to change the Quotation, the Client may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the procedure set out in this clause 14.

**14.2.** Until such time as a Change is made in accordance with this clause, the Client and the Supplier shall, unless otherwise agreed in writing, continue to perform the Quotation in accordance with the terms prior to such Change.

**14.3.** Any discussions which may take place between the Client 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.

**14.4.** Where the Supplier receive a written request for Change (Change Control Note) from the Client, the Supplier shall evaluate the Change Control Note and within 30 days:

- 14.4.1. Request further information from the Client; or
- 14.4.2. Reject the Change Control Note; or
- 14.4.3. Accept the Change Control Note.

**14.5.** If the Supplier accept the Change Control Note, they shall inform the Client of any additional charges payable (Additional Charges).

**14.6.** Unless the Client rejects the Additional Charges within 10 Business Days, the Additional Charges shall be deemed to be accepted.

**14.7.** If the Additional Charges are rejected by the Client, the Change Control Note will be rejected by the Supplier and the parties shall continue to perform the Quotation in accordance with the terms prior to the Change Control Note.

**14.8.** The Supplier reserves the right to charge for any preparation and scoping work completed for the evaluation of the Change Control Note.

**14.9.** A recommendation to amend the Quotation by the Supplier shall be directly submitted to the Project Manager. The Client shall give its response to the recommendation within 14 days.

## **15. LIMITATION OF LIABILITY**

**15.1.** Nothing in this agreement or the Quotation shall limit or exclude the Supplier's or the Client's liability for:

- 15.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 15.1.2. fraud or fraudulent misrepresentation; or
- 15.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

**15.2.** Subject to clause 15.1:

- 15.2.1. neither party to this agreement or the Quotation shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement;
- 15.2.2. subject to clause 15.3, the Supplier's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement or Quotation shall be limited to the Charges paid in the 12-month period prior to the date of the breach; and
- 15.2.3. except for breaches relating to clause 21 (Confidentiality) the Client's total liability to the Supplier, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement or the Quotation shall be limited to an amount equivalent to the Charges payable to the Supplier in the 12 month period prior to the date of the breach under the relevant Quotation or that would have been payable in the first 12 month period if the breach occurs before the first anniversary of the date of this agreement, or the relevant Quotation, as the case may be.

**15.3.** The Supplier shall not be liable for the following (whether direct or indirect) howsoever arising:

- 15.3.1. loss of revenue or other claims (including but not limited to missed content deadlines) due to network failure or downtime;
- 15.3.2. any claim relating to unapproved content being uploaded to a social account if the account has been hacked; or

- 15.3.3. changes by social media service providers, including but not limited to the removal of features or functionality on the social media platform, which prevent, hinder or delay the performance of the Services or delivery of the Deliverables;
- 15.3.4. failure of mobile or Wi-Fi coverage at events;
- 15.3.5. device failure at events;
- 15.3.6. loss of profit; loss of data; loss of use; loss of production; loss of contract; loss of opportunity; loss of savings, discount or rebate (whether actual or anticipated); or harm to reputation or loss of goodwill.

**15.4.** The Supplier reserves the right to charge in full for the whole event coverage fee even if an event is cancelled. The Supplier will use reasonable endeavours to ensure that appropriate staff cover is available for events, provided that the Supplier shall not be liable if event staff are unavailable due to accident, injury or illness.

## **16. TERMINATION**

**16.1.** Without affecting any other right or remedy available to it:

- 16.1.1. the Supplier may terminate this agreement by giving the Client three months' written notice; and
- 16.1.2. The Client may terminate this agreement by giving the Supplier six months' written notice.

**16.2.** Without affecting any other right or remedy available to it, either may terminate this agreement with immediate effect by giving written notice to the other if:

- 16.2.1. the other party fails to pay any amount due under the Quotation on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- 16.2.2. the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- 16.2.3. the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- 16.2.4. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 16.2.5. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 16.2.6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;



- 16.2.7. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- 16.2.8. the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 16.2.9. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 16.2.10. the other party (being an individual) is the subject of a bankruptcy petition or order;
- 16.2.11. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 16.2.12. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.2.4 to clause 16.2.11 (inclusive); or
- 16.2.13. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

**16.3.** Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Client if there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

**16.4.** For the purposes of clause 16.2.1, material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

- 16.4.1. a substantial portion of this agreement; or
- 16.4.2. any of the obligations set out in clauses 10 (Client's obligations), 11 (Software Licence), 12 (Intellectual Property in Software), 13 (Intellectual Property in Products and Deliverables) and 21 (Confidentiality)
- 16.4.3. over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

## **17. CONSEQUENCES OF TERMINATION OF THIS AGREEMENT**

**17.1.** On termination (or expiry) of this agreement, howsoever arising, any licence granted by the Supplier to the Client in respect of Software or Intellectual Property Rights shall terminate automatically.

**17.2.** On termination of the agreement, the following clauses shall continue in force: clause 1 (Interpretation), clause 15 (Limitation of liability), 13.9 (IPRs indemnity), clause 17 (Consequences of termination of this agreement), clause 17 (Consequences of termination of the Quotation), clause 21 (Confidentiality), clause 33 (Governing law) and clause 34 (Jurisdiction).

**17.3.** Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breaches of the agreement which existed at or before the date of termination.

## **18. NON-SOLICITATION**

**18.1.** The Client shall not, without the prior written consent of the Supplier, at any time from the date of this agreement to the expiry of 12 months after termination of this agreement, solicit or entice away from the other or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.

**18.2.** Any consent given by in accordance with clause 18.1 shall be subject to the Client paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Client to that employee, consultant or subcontractor.

## **19. DATA PROTECTION**

**19.1.** If the parties have entered into a separate data processing agreement, then the terms of that agreement shall continue in full force and effect. This clause 19 shall only apply if the parties have not already entered into a separate data processing agreement.

**19.2.** The Client and the Supplier acknowledge that for the purposes of the Data Protection Act 1998, the Client is the Data Controller and the Supplier is the Data Processor in respect of any Personal Data.

**19.3.** The Supplier shall process the Personal Data only in accordance with the Client's instructions from time to time and shall not process the Personal Data for any purpose other than those expressly authorised by the Client.

**19.4.** The Supplier shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.

**19.5.** Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.

**19.6.** The Supplier warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:

19.6.1. take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:

19.6.1.1. the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and

19.6.1.2. the nature of the data to be protected.

19.6.2. take reasonable steps to ensure compliance with those measures.

**19.7.** Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this agreement.

**19.8.** The Client acknowledges that the Supplier is reliant on the Client for direction as to the extent to which the Supplier is entitled to use and process the Personal Data. Consequently, the Supplier will not be liable for any claim brought by a Data Subject arising from any action or omission by the Supplier, to the extent that such action or omission resulted directly from the Client's instructions.

**19.9.** the Supplier may authorise a third party (sub-contractor) to process the Personal Data provided that the sub-contractor's contract:

- 19.9.1. is on terms which are substantially the same as those set out in this agreement; and
- 19.9.2. terminates automatically on termination of this agreement for any reason.

## **20. FORCE MAJEURE**

**20.1.** Neither party shall be in breach of this agreement or any Quotation nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from an event, circumstances or cause beyond its reasonable control (Force Majeure Event).

**20.2.** The Supplier shall not be liable to the Client as a result of any delay or failure to perform its obligations under this agreement or any Quotation as a result of a Force Majeure Event.

**20.3.** If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations under the Quotation for a continuous period of more than 10 Business Days, the Client may terminate the Quotation immediately by giving written notice to the Supplier.

## **21. CONFIDENTIALITY**

**21.1.** Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients, or supplier of the other party or any member of the group of companies to which the other party belongs, except as permitted by clause 21.2.

**21.2.** If the parties have entered into a separate confidentiality agreement, then the terms of that agreement shall continue in full force and effect. This clause 21 shall only apply if the parties have not already entered into a separate confidentiality agreement.

**21.3.** Each party may disclose the other party's confidential information:

- 21.3.1. to its employees, officers, representatives 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 this agreement. 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 21; and
- 21.3.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**21.4.** 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 this agreement.

## **22. VARIATION**

**22.1.** No variation of this agreement or a Quotation shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **23. WAIVER**

**23.1.** A waiver of any right or remedy under this agreement or any Quotation or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

**23.2.** A failure or delay by a party to exercise any right or remedy provided under this agreement or any Quotation or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## **24. RIGHTS AND REMEDIES**

**24.1.** Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **25. SEVERANCE**

**25.1.** If any provision or part-provision of this agreement or any Quotation is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement or any Quotation.

**25.2.** If any provision or part-provision of this agreement or any Quotation is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **26. ENTIRE AGREEMENT**

**26.1.** This agreement, any Quotation and any confidentiality agreement between the parties signed before 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.

**26.2.** Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement or any Quotation. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

## **27. ASSIGNMENTS AND OTHER DEALINGS**

**27.1.** The Supplier (or any Supplier Affiliate, as the case may be) 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 this agreement or any Quotation.

**27.2.** The Client may, after having given prior written notice to the Supplier, assign or subcontract any or all of its rights and obligations under this agreement to a member of its Group for so long as that company remains a member of its Group. If the Client assigns its rights under this agreement or any Quotation to a member of its Group, it shall procure that such company assigns such rights back to it or to such other member of its Group as it may nominate immediately before that company ceases to be a member of its Group.

**27.3.** A party who subcontracts the performance of any or all of its obligations under this agreement or any Quotation to a member of its Group shall immediately resume the performance of such obligations on such company ceasing to be a member of its Group, or delegate the performance of such obligations to such other member of its Group as it may nominate.

## **28. NO PARTNERSHIP OR AGENCY**

**28.1.** Nothing in this agreement or any Quotation 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.

**28.2.** Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **29. THIRD PARTY RIGHTS**

**29.1.** The Supplier may enforce the terms of this agreement on a Client Affiliate who the Supplier have contracted with under the Quotation.

**29.2.** Subject to clause 29.1 a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

**29.3.** Subject to clause 29.1 a person who is not a party to the Quotation shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of that Quotation.

## **30. NOTICES**

**30.1.** Any notice or other communication given to a party under or in connection with this agreement or any Quotation shall be in writing and shall be:

- 30.1.1. 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); or
- 30.1.2. sent by fax to its main fax number: or
- 30.1.3. sent by email to [compliance@hpsgroup.co.uk](mailto:compliance@hpsgroup.co.uk).

**30.2.** Any notice or communication shall be deemed to have been received:

- 30.2.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 30.2.2. 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 at the time recorded by the delivery service.
- 30.2.3. if sent by fax or email, at 9.00 am on the next Business Day after transmission.

**30.3.** 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.

## **31. COUNTERPARTS**

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

**31.2.** Transmission of an executed counterpart of this agreement or any Quotation (but for the avoidance of doubt not just a signature page) by (a) fax or (b) email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement or any Quotation. If either method of delivery is adopted, without prejudice to the validity of the agreement or any Quotation thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

**31.3.** No counterpart shall be effective until each party has executed and delivered at least one counterpart.

## **32. MULTI-TIERED DISPUTE RESOLUTION PROCEDURE**

**32.1.** This clause 32 shall not apply to any dispute arising out of or in connection with clauses 12 (Intellectual Property in Software), 13 (Intellectual Property in Products and Deliverables), 19 (Data Protection) or 21 (Confidentiality).

**32.2.** If a dispute arises out of or in connection with this agreement or any Quotation or the performance, validity or enforceability of this agreement or Quotation (Dispute) then except as expressly provided in this agreement or any Quotation, the parties shall follow the procedure set out in this clause:

- 32.2.1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice:
- 32.2.2. the manager of the Client and the Supplier Account Manager shall attempt in good faith to resolve the Dispute;
- 32.2.3. if the manager of the Client and the Supplier Account Manager are for any reason unable to resolve the Dispute within 30 days of the Dispute Notice, the Dispute shall be referred to a superior manager of the Client and the compliance officer of the Supplier who shall attempt in good faith to resolve it;
- 32.2.4. if the superior manager of the Client and the compliance officer of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the Dispute shall be referred to a director of the Client and the Chief Executive Officer of the Supplier who shall attempt in good faith to resolve it; and

32.2.5. if the director of the Client and the Chief Executive Officer of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start no later than 30 days after the date of the ADR notice.

**32.3.** No party may commence any court proceedings under clause 34 in relation to the whole or part of the Dispute until 40 days after service of the ADR notice, provided that the rights to issue proceedings is not prejudiced by a delay.

**32.4.** If the Dispute is not resolved within 40 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 40 days, or the mediation terminates before the expiration of the said period of 40 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 34 of this agreement.

### **33. GOVERNING LAW**

**33.1.** This agreement and any Quotation and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

### **34. JURISDICTION**

**34.1.** 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 this agreement or any Quotation or their subject matter or formation.