

professional services agreement

1. Definitions

1.1. In the Agreement, Terms with initial capital letters shall have the meanings ascribed to such terms in this Section 1 or elsewhere in this Agreement or attachments hereto:

- a) **“Acceptance Criteria”** means the acceptance criteria (including timing and acceptance tests) for acceptance of Deliverables and / or Services as set out in a Statement of Work;
- b) **“Affiliate”** means, with respect to a Party, any entity controlling, controlled by or under common control with such Party with “control” meaning the power (whether direct or indirect) to direct or cause the direction of an entity’s affairs, whether by means of holding shares, possessing voting power, exercising contractual powers or otherwise and within “controlling” and “controlled” being construed accordingly;
- c) **“Agreement”** means these terms and conditions together with a Statement of Work;
- d) **“Client”** means the entity identified in the relevant Statement of Work;
- e) **“Client Data”** means the data provided by the Client to Supplier in relation to the Services;
- f) **“Client’s Equipment”** means any equipment, systems or facilities provided by the Client and used directly or indirectly in the supply of the Services;
- g) **“Commencement Date”** means the date set out in the relevant Statement of Work on or from which the Supplier will provide the Services set out in the relevant Statement of Work;
- h) **“Confidential Material”** means any non-public, proprietary or sensitive information that is disclosed, whether orally, electronically, in writing or otherwise, including copies, or otherwise made available by a party (the “Disclosing Party”) to the other party (the “Receiving Party”), whether before or after the Effective Date of this Agreement, that is designated as confidential or proprietary, or that the Receiving Party should reasonably understand to be confidential or proprietary given the nature of the information and the circumstances of disclosure. Confidential Information includes (a) for Client, all Client Data transmitted to or from, or stored on, the Services or Deliverables; (b) for Supplier, the Services, Software, and Documentation; and (c) for both parties, any information concerning the Disclosing Party and/or its Affiliates' products, pricing, business information, marketing strategies, financial affairs, employees, customers or suppliers, information concerning marketing plans, research and development efforts, inventions, trade secrets, requirements, software (including software provided by third parties), equipment, technology, names and other identifying information relating to the Client’s and its Affiliates’ employees, suppliers, clients or customers (including names and other information related to clients), Personal Data, price lists, pricing policies, financial information, business methods, processes and procedures, ideas, concepts, techniques, the terms of the Agreement, the results of services performed under any Statement of Work, and any other information and data.;
- i) **“Deliverable”** means all reports and other deliverables prepared for and furnished to the Client by Supplier in connection with the Services;
- j) **“Documentation”** means all documentation specified in a Statement of Work;
- k) **“Good Industry Practice”** means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a company within the relevant industry or business sector offering the same services to a client of similar standing;
- l) **“In-put Material”** means all documents, information and materials provided by the Client relating to the Services, including, but not limited to, business rules, access to systems, computer programs, data, reports and specifications and inventories;
- m) **“Insolvency Event”** means an event in which a Party ceases doing business as a going concern or makes an assignment for the benefit of creditors or is unable to pay its debts as they become due or files a voluntary petition in bankruptcy or is adjudicated a bankrupt or files a petition seeking for itself any reorganization, arrangement, readjustment, liquidation or dissolution under any present or future statute or regulation or is the subject of an involuntary petition in bankruptcy or files an answer admitting the material allegations of a petition filed against it in any such proceeding or consents to or acquiesces in the appointment of a receiver or liquidator with respect to all or any substantial portion of its assets or properties
- n) **“Intellectual Property Rights”** means rights of ownership of any kind of intellectual property, including copyrights, patents, trademarks, service marks, trade secrets, rule sets, and all other intellectual property and all rights therein, and the right to apply for, register, obtain, hold, extend and renew any of the foregoing, and includes copyrights, patents, trademarks, trade secrets and all other intellectual property rights, and the right to apply for, obtain, hold and renew any of the foregoing.;
- o) **“Location”** means the premises of the Client specified in the relevant Statement of Work where the Services are to be performed;
- p) **“Milestone”** means any date set out in the relevant Statement of Work for the performance of any Service or the supply of any Deliverable, as the case may be;

- q) **"Parties"** means the Client and the Supplier (and "Party" shall be construed accordingly);
- r) **"Personal Data Processing Provisions"** means the provisions relating to the Parties' responsibilities in respect of the processing of personal data under the Agreement, including under the European General Data Protection Regulation and the California Consumer Privacy Act, available at <https://www.concentra.co.uk/terms-and-conditions> or such other website address as may be notified to the Client from time to time, as such document may be amended from time to time by Supplier in its sole discretion;
- s) **"Pre-Existing Materials"** means all pre-existing materials owned or controlled by either Party including all Intellectual Property Rights therein that were acquired or developed (i) prior to the Effective Date or (ii) independently by that Party;
- t) **"Services"** means all the services to be performed by and all the obligations of the Supplier under this Agreement, set out in any Statement of Work hereto;
- u) **"Specifications"** means the specifications for the Services and/or the Deliverables, as the case may be, set out in the relevant Statement of Work;
- v) **"Staff"** means, in respect of a Party, its employees, agents and subcontractors;
- w) **"Statement of Work"** means a document setting out a particular Service that a Client has ordered from the Supplier;
- x) **"Supplier"** means the member of the Concentra group identified in the Statement of Work;
- y) **"Supplier Tool"** all concepts, know-how, tools, questionnaires and assessments, modules, courses, frameworks, software, algorithms, databases, content, models, and industry perspectives developed or enhanced outside of or in connection with the Services. For the avoidance of doubt, Supplier Tools shall not include Client's Confidential Material.
- z) **"Term"** means the period set out in Clause 3 below;
- aa) **"Working Day"** means, unless specified otherwise, a day (not being a Saturday or Sunday) on which banks are generally open for business in London.

In the Agreement:

- 1.1. the words "include", "includes", "including", "included", "in particular" shall be construed without limitation and the words "other" and "otherwise" are illustrative and shall not limit the generality of any preceding words;
- 1.2. any reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Agreement and includes any statute, statutory provision, subordinate legislation, enactment, order, regulation, rules or other similar instrument, as from time to time amended, superseded, replaced, consolidated or re-enacted (with or without modification).
- 1.3. The Parties acknowledge and agree that in the event of any conflict or inconsistency between the terms of this Agreement and any terms of a Statement of Work, the terms of this Agreement shall prevail unless the Statement of Work explicitly amends the terms of this Agreement, but only so far as necessary to resolve the conflict or inconsistency.

2. Scope of This Agreement

- 2.1. Any Affiliate of the Client or the Supplier may enter into a Statement of Work, and each such Affiliate of the Client will be deemed to be the Client and each such Affiliate of the Supplier will be deemed to be the Supplier, under an Agreement with respect to any such Statement of Work. The Client will be liable for the performance of the obligations of its Affiliates pursuant to a Statement of Work, including without limitation payment. Client shall make these terms and conditions available to its Affiliates and notify such Affiliates that any purchases from the Supplier or any of the Supplier's Affiliates shall be subject to these terms and conditions.
- 2.2. Once a Statement of Work is signed by both Parties, the Supplier is obliged to supply such Services in accordance with all applicable provisions of this Agreement.
- 2.3. The Client acknowledges that there are lead times between ordering Services, agreement of Statement of Works and the commencement of performance of Services. The Parties shall co-operate in the ordering and agreement of Statement of Works to meet each Party' demands and expectations.
- 2.4. Unless expressly provided otherwise, all representations, warranties, undertakings, covenants, agreements and obligations made, given or entered into in this Agreement by the Client and its Affiliates are made, given or entered into by each of the entities comprising the Client and its Affiliates severally in relation only to itself and the liability of each such entity in respect of any Service provided to it and/or any breach of any such representation, warranty, undertaking, covenant, agreement or obligation shall extend only to any loss or damage arising directly from such Service and/or its own breach, provided that where more than one such entity is in breach and liable in respect of the same loss or damage, liability for the total sum recoverable shall be attributed to such entities in such shares as reflect the actual use or benefit received by each entity and each such entity shall be liable only for its share of the total. For the avoidance of doubt, the Parties acknowledge and agree that no loss or damage shall be recoverable twice.
- 2.5. Except as otherwise specified in this Agreement, the Supplier will determine and will be responsible for providing all management, accommodation, Staff, hardware, software and other materials and resources necessary to provide the Services.

- 2.6. Nothing in the Agreement is intended or shall be construed to create a relationship of agency or partnership between the Supplier and the Client and it is expressly understood that neither the Supplier nor any of its Staff are employees or agents of the Client. Accordingly, except as expressly authorised herein, no Party shall have any authority to act or make representations on behalf of the other Party, and nothing herein shall impose liability on a Party in respect of any liability incurred by another Party to a third party.

3. Term

- 3.1. Any Agreement entered into under a Statement of Work shall come into force on its Commencement Date and shall, unless terminated earlier in accordance with the provisions of this Agreement, continue in effect until the date the relevant Services have been completed or the relevant Deliverables, if any, have been accepted and / or the Term (as defined in the Statement of Work).

4. Provision of Services and Client Obligations

- 4.1. The Supplier will use reasonable efforts to will provide the Services from the Commencement Date in accordance with the terms of this Agreement and, where applicable, the Milestones.
- 4.2. The Supplier shall use all reasonable efforts to carry out the Services in such a manner as to minimise any disruption to the business of the Client and its Affiliates.
- 4.3. The Client shall:
- a) co-operate with the Supplier in all matters relating to the Services and shall ensure that each person with whom the Supplier engages in relation to the Services have the authority contractually to bind the Client on matters relating to the Services;
 - b) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client's premises, office accommodation, data and other facilities as required by the Supplier;
 - c) provide, in a timely manner, such In-put Material and other information as the Supplier may require and ensure that it is accurate in all material respects. For the avoidance of doubt, the Supplier shall be under no obligation to test, check or confirm the accuracy of the In-put Material prior to performing the Services unless required by a Statement of Work;
 - d) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Location;
 - e) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the use of In-put Material and the use of the Client's Equipment;
 - f) comply with any other obligations set out in the applicable Statement of Work ("Client Obligations").
- 4.4. If the Supplier's performance of its obligations under this Agreement 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.
- 4.5. Acceptance of the Services and / or Deliverables, by Client will occur upon delivery of the Services and / or Deliverables or in accordance with the agreed Acceptance Criteria.

5. Charges and Payment

- 5.1. The charges for each Statement of Work shall be in accordance with the fee structure set out in the applicable Statement of Work ("Price").
- 5.2. The Client shall pay to Supplier the Price as invoiced.
- 5.3. All valid invoices issued to the Client pursuant to a Statement of Work shall be payable within 30 days of date of issue. Invoices in respect of Services to be supplied at a fixed price shall be issued in advance of the supply of the Services. The Client shall not be permitted to make any deduction from the Price whether in respect of set-off, counterclaim or otherwise.
- 5.4. The Price, and any additional charges payable hereunder, are exclusive of VAT, customs charges and duties, which shall be paid by the Client in the amount and manner prescribed by law.
- 5.5. Notwithstanding Clause 5.2 or any other arrangements for provision of credit which Supplier may have agreed with the Client in respect of a Statement of Work, the whole price of all Services bought or agreed to be bought by the Client shall be immediately payable without demand in any circumstances entitling Supplier to terminate the Contract pursuant to Clause 9.
- 5.6. Without prejudice to any of its other rights, if the Client fails to make any payment when due Supplier shall be entitled to:
- a) suspend its obligations under the Statement of Work for so long as any payment due hereunder remains outstanding; and/or

- b) charge interest on the overdue amount at the greater of 4% above the Bank of England's base rate or the maximum rate allowable per the Applicable Law on all such past due amounts.
- 5.7. The Client shall make all payments under each Statement of Work without withholding or deduction of, or in respect of, any tax unless required by law. If any such withholding or deduction is required, the Client shall pay to the Supplier such additional amount as will ensure that the Supplier receives the same total amount that it would have received if no such withholding or deduction had been required.

6. Intellectual Property

- 6.1. As between Client and Supplier, all Intellectual Property Rights developed or contained in the Deliverables and all Supplier Pre-Existing Materials shall remain the property of the Supplier and save where otherwise specified in a Statement of Work, as between Supplier and Client, all Intellectual Property Rights in the Client Pre-Existing Materials shall remain the property of the Client.
- 6.2. Upon payment in full of the Price, the Client will own all Deliverables furnished to the Client by Supplier in connection with the Services, save that Supplier retains ownership of all Supplier Tools. To the extent the Deliverables include any embedded Supplier Tools, Supplier hereby grants the Client a non-exclusive, non-transferable, non-sublicensable, worldwide, royalty-free license to use and copy the Supplier Tools solely as part of the Deliverables and subject to the limitations herein on disclosure of Supplier materials and publicity (Licence). The Client agrees that, without Supplier's prior written permission, it will not, or permit any third party to (a) access, copy or reverse engineer any Supplier Tool or Deliverable, or (b) remove or circumvent security or technological safeguards, including notices, digital protection mechanisms, metadata, watermarks, or disclaimers provided with any Supplier Tool or Deliverable.
- 6.3. Subject to Sections 6.4 and 6.7 below, Supplier will indemnify and defend the Client and its affiliates and its and their agents, directors, officers, representatives, attorneys, and employees from any damages, attorney fees and costs finally awarded against the Client arising out of any claim, demand, suit or proceeding made or brought against the Client by a third party alleging that the Services infringe or misappropriate such third party's Intellectual Property Rights. If Supplier receives information about an infringement or misappropriation claim related to the Services and/or Deliverables, Supplier may, in its sole discretion and at no cost to the Client:
- a) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching Supplier's warranties; and
 - b) obtain a license for the Client's continued use of the Services in accordance with the Agreement.
- 6.4. The indemnification obligations contained within Section 6.3 above do not apply if the infringement allegation:
- a) does not state that the Services and/or Deliverables are the basis of the claim; or
 - b) arises from the use or combination of the Services and/or Deliverables or any part thereof with software, hardware, data or processes not provided by Supplier, if the Services and/or Deliverables or use thereof would not infringe without such combination; or
 - c) is based on the use of the Services and/or Deliverables in a manner other than that for which it was designed or contemplated as evidenced by Supplier's Documentation; or
 - d) is based on any unauthorised modification of the Services and/or Deliverables or Services and/or Deliverables by any Party; or
 - e) is based on any compliance with designs, plans or specifications provided by Client.
- 6.5. Subject to Section 6.7 below, the Client will defend Supplier and its Affiliates against any claim, made or brought against Supplier by a third Party alleging that:
- a) any of the Client Data, or the Client's use of the Client Data with the Services or Deliverables, infringes or misappropriates such third party's Intellectual Property Rights; or
 - b) arising from the Client's use of the Services in an unlawful manner or in violation of the Agreement or a Statement of Work; or
- 6.6. Client will indemnify Supplier on demand from any damages, attorney fees and costs finally awarded against Supplier as a result of, or for any amounts paid by Supplier under a settlement approved by Supplier in writing of a claim against Supplier, provided that Supplier complies with the claim conduct procedure set out under Section 6.7 below.
- 6.7. The indemnifications obligations contained in this Section 6 will only apply where, and shall be conditional upon, the indemnified Party: (a) promptly giving the indemnifying Party written notice of the claim; (b) giving the indemnifying Party sole control of the defense and settlement of the claim (except that the indemnifying Party may not settle any claim unless it unconditionally releases the indemnified Party of all liability); and (c) giving the indemnifying Party all reasonable assistance, at the indemnified Party's expense.
- 6.8. Should the Deliverables and/or the Services become, or in Supplier's opinion be likely to become, the subject of any such infringement claim, the Client shall permit Supplier, at Supplier's option and expense, to (i) procure for the Client the right to continue using the Deliverables and/or the Services, or (ii) replace or modify the Deliverables and/or the Services so that they

become non-infringing, or (iii) terminate the Client's right to use the Deliverables and/or the Services, upon which termination the Client shall, and shall procure that its employees, agents and contractor's, promptly destroy all copies of the Deliverables and/or the Services and certify the same to Supplier.

7. Warranties

7.1. The Supplier warrants, represents and undertakes that the Services shall be performed:

- a) with reasonable skill and care; and
- b) in a timely and professional manner, in conformity with Good Industry Standards by a sufficient number of competent personnel with appropriate skills, qualifications and experience; and
- c) materially in accordance with the relevant Statement of Work and all applicable provisions of this Agreement and such security policies as the Client and/ may from time to time notify to the Supplier in writing; and
- d) the Services and / or Deliverables will, for a period of thirty (30) days or such other date as may be agreed in a Statement of Work (the "Warranty Period"), from the date of acceptance (or if there is no acceptance, then from the date of provision of the relevant Services and/or Deliverables), conform to, and operate in accordance with the Specifications.

7.2. Except for the express warranties and conditions expressly contained or referred to in this Agreement, the Supplier makes no other warranties or representations regarding the Services and all warranties, conditions and other terms express or implied statutory or otherwise in respect of compliance with descriptions, the satisfactory quality or the fitness for purpose of the Services which are not expressly set out in this Agreement are excluded to the fullest extent permitted by law.

8. Limitation of Liability

8.1. Except as expressly and specifically provided in the Agreement the Client assumes sole responsibility for results obtained from the use of the Services and/or Deliverables by the Client, and for conclusions drawn from such use. Supplier shall have no liability for any damage caused by Client's use of the Services and/or Deliverables, errors or omissions in any information, instructions or scripts provided to Supplier by the Client in connection with the Services and/or Deliverables, or any actions taken by Supplier at the Client's direction.

8.2. The limitations in Section 8.3 shall not apply in respect of any liability arising out of: (a) the Parties' indemnity obligations in Section 6; (b) death or personal injury resulting from any negligence of Supplier, its employees or agents; (c) for fraud or fraudulent misrepresentation on the part of Supplier; and (d) gross negligence or wilful misconduct of the Party to be charged or any person for whom it is responsible.

8.3. SUBJECT TO CLAUSE 8.2, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY PARTY CLAIMING THROUGH OR UNDER THE OTHER PARTY FOR ANY LOSS OF ACTUAL OR ANTICIPATED PROFITS, LOSS OF BUSINESS, CONTRACTS AND ANTICIPATED SAVINGS, OR SOFTWARE, EQUIPMENT DOWNTIME, OR FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL LOSSES, COSTS, CHARGES, EXPENSES OR DAMAGES, HOWEVER ARISING, RESULTING FROM THE AGREEMENT OR THE PERFORMANCE OR USE OF THE SERVICES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUBJECT TO CLAUSE 8.2 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY'S LIABILITY TO THE OTHER SHALL BE LIMITED TO THE FEES PAID BY THE CLIENT TO SUPPLIER UNDER THE AGREEMENT DURING THE TWELVE MONTH PERIOD PRECEDING THE CAUSE OF ACTION AT ISSUE (OR, IF THE RELEVANT LIABILITY ARISES WITHIN THE PERIOD OF 12 MONTHS AFTER THE DATE OF THE AGREEMENT, AN AMOUNT EQUAL TO THE FEES LIKELY TO BE PAYABLE BY THE CLIENT TO SUPPLIER IN THE FIRST 12 MONTHS OF THE DATE OF THE AGREEMENT).

9. Termination

9.1. Either Party ("Initiating Party") may terminate the Agreement or a Statement of Work at any time forthwith by notice in writing if:

- a) the other Party (the "Breaching Party") is in material breach of any of its material obligations under that Statement of Work and (if the breach is capable of remedy) fails to remedy the breach within thirty (30) Working Days after receipt of notice in writing from the Initiating Party giving particulars of the breach and requiring the Breaching Party to do so;
- b) the other Party suffers an Insolvency Event; or
- c) the other Party commits any irremediable breach of a Statement of Work.

10. Consequences of Termination

10.1. Any termination of this Agreement or a Statement of Work (howsoever occasioned) shall not affect any accrued rights or liabilities of either Party which have arisen on or before the date of termination, nor shall it affect the coming into force or continuance

in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination, including Sections 5, 6, 8, 11, 14.

11. Confidentiality

- 11.1. Each Party shall keep confidential and shall not make available or disclose the Confidential Material of the other Party to any person, or make or permit any use of such Confidential Material without the prior written consent of the other Party, except that such Confidential Material may be made available or disclosed to and used by those, and only those, of the Staff of the receiving Party as are required for the purpose of fulfilling the receiving Party's obligations under this Agreement. Each Party shall take all reasonable steps to ensure that any such Confidential Material disclosed to any person in accordance with this Section is treated as confidential by the person to whom it is disclosed and shall require its subcontractors to enter into a confidentiality agreement which imposes confidentiality obligations no less protective of the Confidential Material than those imposed upon under this Agreement.
- 11.2. Nothing in this Section shall prevent either Party from disclosing Confidential Material where it is required to be disclosed by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceeding or claim or otherwise by applicable law; provided, however, that a Party shall, if legally permitted, give the other Party prior reasonable notice as soon as possible, of such required disclosure so as to enable the other Party to seek relief from such disclosure requirement or measures to protect the confidentiality of the disclosure.
- 11.3. Without prejudice to any other rights or remedies that a Party may have, both Parties acknowledge that the other Party may not have an adequate remedy at law for any breach of the provisions of this Section, and that therefore the other Party shall be entitled to equitable relief including injunctive relief.
- 11.4. The provisions of this Section shall not apply to any Confidential Material which:
- a) is or becomes commonly known within the public domain other than by breach of this Agreement;
 - b) is obtained from a third party who is lawfully authorised to disclose such information free from any obligation of confidentiality; or
 - c) is independently developed without reference to any Confidential Material.

12. Data Security and Compliance

- 12.1. The Personal Data Processing Provisions set out each of the Party's responsibilities in respect of Personal Data compliance (as defined within such provisions).

13. Employees and Non-Solicitation

- 13.1. During the term of this Agreement and for a period of 6 months from its termination, neither Party will employ, induce, entice or solicit for employment any member of the other's then current personnel. The preceding sentence does not, however, prohibit either Party from soliciting employment by general advertisement.
- 13.2. In respect of any breach by either Party of Section 13.1, the other Party, in addition to any other remedies available in the Statement of Work or at law, shall be entitled to recover from the Party in breach the costs of recruiting and training a replacement for any member of that Party's personnel employed or solicited for employment.

14. Excused Non-Performance

- 14.1. The Supplier shall not be liable for any loss or damage suffered or incurred by the Client arising from the Supplier's delay or failure to fulfil or otherwise discharge any of its obligations under this Agreement or any Statement of Work where such delay or failure is caused by any non-performance of its obligations by the Client, industrial dispute, sudden or substantial depletion of the Supplier's staff, reason of force majeure or any other cause or circumstance beyond the Supplier's reasonable control.

15. Disputes

- 15.1. All disputes, differences or questions arising in relation to this Agreement shall be referred in the first instance to each Party's authorised representative (as detailed in a Statement of Work), who shall meet together and attempt to settle the dispute between themselves (acting in good faith) within one calendar month of notice of the dispute, difference or question being given.
- 15.2. If the Parties' representatives fail to resolve the matter within one calendar month, then either Party may refer the dispute to an appropriate court or tribunal, or may (at its discretion) request for the matter to be resolved by mediation by way of notice to the other Party ("ADR Notice"). The commencement of mediation will not prevent the parties commencing or continuing any court proceedings as set out in Section 18.

15.3. Any reference to mediation shall be made in accordance with the Model Mediation Procedures of the Centre for Effective Dispute Resolution (CEDR). The mediation shall be conducted by a single mediator appointed by the parties or, if the parties are unable to agree on the identity of the mediator within fourteen (14) days after the date of the request that the dispute be resolved by mediation, or if the person appointed is unable or unwilling to act, the mediator shall be appointed by CEDR on the application of either Party. The mediation shall be conducted in English at the offices of CEDR in London. The Mediation Agreement referred to in the Model Mediation Procedure shall be governed by, and construed and take effect in accordance with the substantive law of England and Wales. Mediation is without prejudice to the rights of the parties to injunctive relief or to the rights of the parties in any future proceedings. A copy of the ADR Notice shall be sent to CEDR, and the parties agree that mediation will start no later than one calendar month after the date of the ADR Notice.

15.4. If the parties agree to accept the recommendations of the mediator, or otherwise reach an agreement on a matter in dispute, such agreement shall be set out in writing, and, once it is signed by authorised representatives of the parties shall be binding and shall be implemented by each Party in accordance with its terms.

16. Miscellaneous

16.1 Notices. All notices served by either Party under this Agreement shall be in writing, sent by facsimile or first-class registered or recorded delivery post to the address of the relevant Party as set out in the relevant Statement of Work.

16.2 Third party rights. The parties to the Agreement do not intend for any of its term to be enforceable by any person who is not a Party to the Agreement, whether or not such right is imposed by an Applicable Law relating to third party rights.

16.3 Entire Agreement. The Agreement constitutes the entire agreement between the Parties in relation to its subject matter, and replaces and extinguishes all prior agreements, undertakings, arrangements, understandings, communications or statements of any nature made by the parties, whether oral or written, with respect to such subject matter. The rights, powers and remedies provided in the Agreement are cumulative and (unless otherwise provided in the Agreement) are not exclusive of any rights, powers and remedies provided by law or otherwise.

16.4 No Reliance. Each Party acknowledges that it has not relied on any statements, warranties or representations given or made by any other Party under or in relation to the Agreement, save those expressly set out in the Agreement. Each Party further acknowledges that it shall have no rights or remedies with respect to such subject matter other than under the Agreement. Each Party acknowledges and agrees that nothing in this Section 16 is intended to limit or exclude any Party's liability for fraudulent misrepresentation.

16.5 Modification. No variation of the Agreement shall be effective unless made in writing and signed by the parties hereto or their duly authorised representatives.

16.6 Forbearance. No relaxation, forbearance or indulgence by either Party in enforcing any of the terms or conditions of the Agreement against the other or the granting of time by either Party to the other shall be deemed to be a waiver or shall prejudice, affect or restrict the rights and powers of that Party against the other, nor shall any waiver by either Party of any breach by the other operate as a waiver of or in relation to any other, subsequent or continuing breach of the Agreement.

16.7 Severability. If any provision of the Agreement is found by any court, regulatory or administrative body of competent jurisdiction to be illegal, invalid or unenforceable, and the provision in question is not of a fundamental nature to the Agreement as a whole, such provision shall be severed and the legality, validity and enforceability of the remainder of the Agreement (including the remainder of the provision which contains the relevant provision) shall not be affected. If, as a consequence of the foregoing, the accomplishment of the purpose of the Agreement is prevented, the parties shall immediately commence good faith negotiations to agree upon any lawful and reasonable changes to the Agreement that may be necessary to effect, as close as possible, the commercial intent of the Agreement.

16.8 Assignment. Except as otherwise expressly provided herein, neither Party may transfer, assign, mortgage, encumber the Agreement or any of its rights or interests hereunder, nor declare a trust of such interests or delegate or sub-contract any obligation to be performed hereunder, without the prior written consent of the other Party. Any attempted assignment, delegation or sub-contracting in contravention of this provision shall be null and void, and of no force or effect.

16.9 Costs and Expenses. Each Party shall bear its own costs and expenses in connection with the negotiation, preparation and signature of the Agreement.

16.10 Counterparts & Execution. The Agreement may be entered into by the parties in any number of counterparts. Each counterpart shall, when executed and delivered, be regarded as an original, and all the counterparts shall together constitute one and the same instrument.

17. Governing Law and Jurisdiction

17.1. The Governing Law and Jurisdiction is dependent on where the Client is located.

17.2. If the Client is located outside of North America, any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claim) shall be governed by, and construed in accordance with, the laws of England and Wales and each Party irrevocably agrees to submit to the sole and exclusive jurisdiction of England and Wales.

17.3. If the Client is located within North America, any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claim) shall be governed by, and construed in accordance with, the domestic



laws of the State of New York and each Party irrevocably agrees to submit any disputes and claims (including non-contractual) to the sole and exclusive jurisdiction of New York. EACH PARTY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT.