

## BACKGROUND

- A The Client wishes the Supplier to provide it and the Supplier agrees to provide the Client with certain goods and services as described in more detail in one or more Statement of Works.
- B The parties agree that such goods and services and any deliverables produced by Supplier in the performance of the services shall be supplied in accordance with the terms of this Agreement.

## OPERATIVE PROVISIONS

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 The following words have these meanings in this Agreement unless the contrary intention appears:

**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;

**Affiliate** means any Subsidiary and Associated Company;

**Associated Company** means any associated company of either party from time to time within the meaning of Section 449 of the Corporation Tax Act 2010 or any subordinate legislation;

**Agreement** means this these terms and conditions together with all Statement of Works;

**Client's Equipment** means any equipment, systems, cabling or facilities provided by the Client and used directly or indirectly in the supply of the Services;

**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;

**Confidential Material** of either party means all information and material relating to the business, Client information, systems or affairs of that party, its representatives or its Clients that is or has been:

(i) disclosed by that party to the other party under or in connection with this Agreement, whether orally, electronically, in writing or otherwise, including copies; or

(ii) learnt, acquired or generated by the other party in connection with this Agreement;

including, without limitation, the terms of this Agreement;

**Deliverable** means any Materials (or combination thereof) to be supplied, provided or produced as specified in the relevant Statement of Work by or on behalf of the Supplier in the performance of the

Services;

<b>Documentation</b>	means all documentation specified in a Statement of Work;
<b>Good Industry Practice</b>	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;
<b>In-put Material</b>	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;
<b>Insolvency Event</b>	means the occurrence of any of the following: <ul style="list-style-type: none"><li>(a) a party stops or suspends, or declares any intention to stop or suspend, its business or payment of its debts or any class of its debts generally or otherwise becomes insolvent;</li><li>(b) or any step is taken to enforce any charge, mortgage or other security interest over all or any material part of its assets or undertaking or any of the same is or becomes enforceable;</li><li>(c) a notice is issued for the purposes of convening a meeting to approve the placing of a party in administration or liquidation, or a petition is presented or an order made for the administration or liquidation of a party or otherwise become subject to dissolution proceedings;</li><li>(d) a voluntary arrangement under section 1 of the Insolvency Act 1986 (as amended by the Insolvency Act 2000), a scheme of arrangement under part 26 of the Companies Act 2006, or any other arrangement, compromise or composition of a party's debts, or any class of its debts, is proposed or made by or with a party;</li><li>(e) a judgment, order or award made against a party is outstanding and not discharged within 20 days or if any distress, execution, sequestration or similar process is levied on or commenced against any of the assets of a party and not lifted, withdrawn or discharged within 45 days; or</li><li>(f) any circumstances arise or events occur in relation to a party or any of its material assets in any country or territory in which it carries on business or to the jurisdiction of whose courts it or any of its assets is subject, which corresponds to or has an effect equivalent or similar to any of those stated in paragraph (a) to (e)</li></ul>

(inclusive) of this definition;

<b>Intellectual Property Rights</b>	means any and all of the following rights in (i) patents, designs and trade marks (whether registered or unregistered), copyright, database rights and know how, inventions, discoveries, utility models, goodwill and in any trade or service name or get-up; (ii) all other intellectual property rights and similar or equivalent rights anywhere in the world which currently exist or are recognised in the future; and (iii) applications, reversions, extensions and renewals in relation to any such rights;
<b>Location</b>	means the premises of the Client specified in the relevant Statement of Work where the Services are to be performed;
<b>Materials</b>	means information, data, reports, studies, object modules, executables, flow charts, diagrams, artwork and other copyright works and tangible or intangible material including, without limitation, concepts, ideas, inventions and designs;
<b>Milestone</b>	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;
<b>Parties</b>	means the Client and the Supplier (and “ <b>Party</b> ” shall be construed accordingly);
<b>Pre-Existing Materials</b>	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;
<b>Services</b>	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;
<b>Specifications</b>	means the specifications for the Services and/or the Deliverables, as the case may be, set out in the relevant Statement of Work;
<b>Staff</b>	means, in respect of a party, its employees, agents and subcontractors;
<b>Statement of Work</b>	means a document setting out a particular Service that a Client has ordered from the Supplier;
<b>Subsidiaries</b>	means any subsidiary of either party from time to time within the meaning of Section 1159 of the Companies Act 2006 or in any subordinate legislation made under the Companies Act 2006;

**Supplier** means Concentra Consulting Limited and/or any Affiliate of Concentra Consulting Limited.

**Supplier Parties** means the Supplier, any Affiliates of the Supplier, any direct or indirect subcontractors of the Supplier or its Affiliates and any of such subcontractors' Affiliates (and "**Supplier Party**" shall be construed accordingly);

**Term** means the period set out in Clause 3 below;

**Working Day** means, unless specified otherwise, a day (not being a Saturday or Sunday) on which banks are generally open for business in London

1.2 Except where the context otherwise requires, words denoting the singular include the plural and vice versa, words denoting any gender include all genders, and words denoting persons include firms and corporations and vice versa.

1.3 Unless otherwise stated, a reference to a clause or schedule is a reference to a clause of or schedule to this Agreement.

1.4 Clause headings are for ease of reference only and do not affect the construction of this Agreement.

1.5 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 is 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 This Agreement provides a framework that entitles (but does not require) the Client to procure from the Supplier, certain Services via the creation from time to time of Statement of Works, in accordance with Clause 2.2 and that, once a Statement of Work is signed, obliges the Supplier 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 cooperate in the ordering and agreement of Statement of Works to meet each parties' 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 Affiliated Companies are made, given or entered into by each of the entities comprising the

Client and its Affiliated Companies 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 This Agreement shall be deemed to have come into force on the Effective Date and shall continue thereafter unless and until otherwise terminated in accordance with the terms of this Agreement (the “**Term**”).
- 3.2 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, using reasonable efforts, 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 endeavours to carry out the Services in such a manner as to minimise any disruption to the business of the Client and its Affiliated Companies.
- 4.3 The Client shall:
- 4.3.1 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;
  - 4.3.2 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;
  - 4.3.3 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;

- 4.3.4 be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services;
  - 4.3.5 inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Location;
  - 4.3.6 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;
  - 4.3.7 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 Unless otherwise agreed in writing with the Client, Supplier shall be entitled to allocate payments received to settle (in full or in part) any sums due from the Client under any Contract, in any order or manner the Supplier determines, and in particular shall be entitled to apply any part payment to settle outstanding interest on overdue amounts, ahead of principal.
- 5.5 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.
- 5.6 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.
- 5.7 Without prejudice to any of its other rights, if the Client fails to make any payment when due Supplier shall be entitled to:

- 5.7.1 suspend its obligations under the Statement of Work for so long as any payment due hereunder remains outstanding; and/or
- 5.7.2 charge interest on the overdue amount at the statutory rate, and otherwise in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

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 On payment of the Price in full for the Services provided, the Supplier hereby grants to the Client a non-exclusive and non-transferable, royalty-free licence to use the Deliverables for its own internal business purposes only (the "Licence").
- 6.3 The Supplier will, at its own expense, defend any legal action brought against the Client to the extent that it is based on a claim that the Services or Deliverables (or any part thereof), when used in accordance with any accompanying documentation, infringes the copyright of any third party. The Supplier will pay any final judgement awarded to the third party against the Client and reasonable legal costs on behalf of the Client, PROVIDED THAT the Client shall (i) notify the Supplier promptly in writing of any such claim; (ii) permit the Supplier to have sole control of the defence, compromise or settlement of such claim, including any appeals; (iii) not make any prejudicial statements or settlement offers without the prior written consent of the Supplier; (iv) fully co-operate with the Supplier in the defence or settlement of such claim; and (v) the claim does not arise as a result of any breach by the Client of a term of the Licence.
- 6.4 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.
- 6.5 Supplier shall have no liability for any Intellectual Property Rights infringement claim to the extent that it is based on (i) the use or combination of Deliverables with software, hardware or other materials not recommended by Supplier, provided such infringement would not have arisen but for such use or combination; or (ii) the use of the Deliverables in a manner other than that for which it was designed or contemplated as evidenced by Supplier's Documentation; or (iii) any unauthorised modification of the Deliverables or Services by any party; or (iv) any compliance with designs, plans or specifications provided by Client.

## **7. WARRANTIES**

- 7.1 The Supplier warrants, represents and undertakes that the Services shall be performed:
- 7.1.1 with reasonable skill and care; and
  - 7.1.2 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
  - 7.1.3 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
  - 7.1.4 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 All exclusions and limitations in the terms of this Agreement or any Statement of Work shall only apply so far as permitted by law and in particular nothing shall exclude or restrict liability:
- 8.1.1 for death or personal injury resulting from the negligence of a party or its employees acting in the course of their employment, or its agents, acting in the furtherance of their duties;
  - 8.1.2 for fraudulent misrepresentation or other fraud;
  - 8.1.3 for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982; or
  - 8.1.4 to the extent prohibited by the Consumer Protection Act 1987.
- 8.2 The exclusions and limitations of liability contained in the terms of this Agreement and each Statement of Work shall apply regardless of whether the loss or damage was foreseeable or whether the Client notifies Supplier of the possibility of any greater loss.
- 8.3 Neither party shall in any circumstances be liable to the other for:
- 8.3.1 loss of profits; or
  - 8.3.2 loss of sales or turnover; or



- 8.3.3 loss or damage to reputation; or
- 8.3.4 indirect loss or damage; or
- 8.3.5 consequential loss or damage; or
- 8.3.6 special loss or damage,

however arising, and loss includes a partial loss or a reduction in value as well as a complete or total loss.

- 8.4 Subject to Clause 8.1 the total aggregate liability of one party to the other for any claims arising out of or in connection with the terms of this Agreement, the Statement of Work, and/or the Services, however arising will not exceed the lesser of one hundred and twenty-five percent (125%) of the Price paid or one million pounds (£1,000,000).
- 8.5 The term "however arising" when used or referred to in this Agreement shall cover all causes and actions giving rise to liability of the Supplier arising out of or in connection with the terms of this Agreement, each Statement of Work and/or the Services (i) whether arising by reason of any misrepresentation (whether made prior to and/or in the terms of this Agreement or a Statement of Work) negligence, breach of statutory duty, other tort, repudiation, renunciation or other breach of contract, restitution or otherwise; (ii) whether arising under any indemnity; (iii) whether caused by any total or partial failure or delay in supply of the Services and/or by any defect in hardware, software or materials; and (iv) whether deliberate (but not with malicious intent) or otherwise, however fundamental the result.
- 8.6 In view of the exclusions and limitations of the Supplier's liability in these terms, the Supplier recommends that the Client considers taking out its own insurance in respect of those risks for which the Supplier excludes or limits liability. Additionally, the Client acknowledges that the price of the Services provided for under the Contract reflects the exclusions and limitations on Supplier's liability as set out in this Clause 8, and that the Client had the opportunity to negotiate variations to the exclusions and limitations, upon the agreement of a higher price. Accordingly, the parties agree that such exclusions and limitations are reasonable in all the circumstances.
- 8.7 Each provision of this Clause 8, limiting or excluding liability, operates separately and shall survive independently of the other provisions.

## **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:
  - 9.1.1 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;
  - 9.1.2 the other party suffers an Insolvency Event; or
  - 9.1.3 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 Clauses 5, 6, 8, 11, 14, . Unless a Statement of Work is terminated by Supplier pursuant to Clause [ ], the Licence to use the Deliverables contained in Clause [ ] shall survive any termination of the relevant Statement of Work.

## **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 Clause 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 Clause 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 Clause, and that therefore the other party shall be entitled to equitable relief including injunctive relief.
- 11.4 The provisions of this Clause shall not apply to any Confidential Material which:
- 11.4.1 is or becomes commonly known within the public domain other than by breach of this Agreement;
  - 11.4.2 is obtained from a third party who is lawfully authorised to disclose such information free from any obligation of confidentiality; or
  - 11.4.3 is independently developed without reference to any Confidential Material.

## **12. DATA**

- 12.1 Each party acknowledges that for the purposes of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 ("Data Protection Laws"), the Client is the Data Controller and the Supplier is the data processor in respect of any Personal Data.

- 12.2 The Supplier shall process 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.
- 12.3 The Supplier shall take reasonable steps to ensure the reliability of all its employees who have access to the personal data.
- 12.4 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.
- 12.5 The Supplier warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:
- 12.5.1 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:
- (a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
  - (b) the nature of the data to be protected.
  - (c) take reasonable steps to ensure compliance with those measures.
- 12.6 The Client acknowledges that the Supplier is reliant on the Client for direction as to the extent to which 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.
- 12.7 The Supplier may authorise a third party (sub-contractor) to process the personal data provided that the sub-contractor's contract:
- 12.7.1 is on terms which are substantially the same as those set out in this Agreement; and
- 12.7.2 terminates automatically on termination of this Agreement for any reason.
- 12.8 For the purposes of this Clause 12 "data controller", "data processor", "data subject", "personal data", "processing" and "Information Commissioner" shall have the meaning ascribed to them in the Data Protection Laws.

### **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 Clause 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. The Client undertakes to the Supplier that it will immediately indemnify the Supplier against all proceedings, costs, fees, expenses, payments, liabilities, losses and damages arising out of the breach or negligent performance by the Client of any of its obligations.

#### **15. CHANGE CONTROL PROCEDURE**

- 15.1 Any change or variation to this Agreement sought by the Client or enacted by Concentra, including but not limited to, a change to the Services shall be in accordance with the procedure set out in the Statement of Work

#### **16. DISPUTES**

- 16.1 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.
- 16.2 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 clause 23.
- 16.3 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.
- 16.4 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.

#### **17. NOTICES**

- 17.1 Any notice or other communication which either party is required by the Agreement to serve on the other party shall be in writing and shall be sufficiently served if sent to the other party at its

specified address as follows: (a) by hand, (b) by registered or first class post or recorded delivery, or (c) by e-mail or facsimile transmission confirmed by registered or first class post or recorded delivery. If notice is sent to an international address, then such notice shall be sent both by facsimile transmission and by registered urgent express mail or urgent international carrier.

- 17.2 Notices sent by registered post or recorded delivery shall be deemed delivered three (3) Working Days following the day of posting. Notices sent by email and/or facsimile transmission shall be deemed delivered on the day of transmission if transmitted before 4:00 p.m. on a Working Day in the jurisdiction of the receiving party, but otherwise on the next following Working Day. In all other cases, notices are deemed delivered on the day when they are actually received. All notices and other communications served hereunder shall expressly refer to the Clause or sub-Clause pursuant to which they are served.

## **18. RIGHTS OF THIRD PARTIES**

- 18.1 The parties to this Agreement do not intend that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person who is not a party to this Agreement.

## **19. ENTIRE AGREEMENT**

- 19.1 This Agreement together with each Statement of Work constitutes the entire agreement between the parties in relation to its subject-matter, and replaces and extinguishes all prior agreements, undertakings, arrangements, understandings or statements of any nature made by the parties, whether oral or written, with respect to such subject matter.

- 19.2 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 this Agreement, save those expressly set out in this Agreement. Each party further acknowledges that it shall have no rights or remedies with respect to such subject matter other than under this Agreement. Each party acknowledges and agrees that nothing in this Clause 18 is intended to limit or exclude any party's liability for fraudulent misrepresentation.

## **20. GENERAL**

- 20.1 No variation of this Agreement shall be effective unless made in writing and signed by the parties hereto or their duly authorised representatives.
- 20.2 The rights, powers and remedies provided in this Agreement are cumulative and (unless otherwise provided in this Agreement) are not exclusive of any rights, powers and remedies provided by law or otherwise.
- 20.3 No relaxation, forbearance or indulgence by either party in enforcing any of the terms or conditions of this 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 this Agreement.
- 20.4 If any provision of this 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 this Agreement is prevented, the parties shall immediately commence good faith negotiations to agree upon any lawful and reasonable changes to this Agreement that may be necessary to effect, as close as possible, the commercial intent of this Agreement.

- 20.5 Except as otherwise expressly provided herein, neither party may transfer, assign, mortgage, encumber this 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.
- 20.6 Each party shall bear its own costs and expenses in connection with the negotiation, preparation and signature of this Agreement.
- 20.7 This 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.

## **21. GOVERNING LAW AND JURISDICTION**

- 21.1 The Governing Law and Jurisdiction is dependent on where the Client is located.
- 21.2 If the Client is located outside of North America, the Client shall contract with the Concentra entity named on the Order Form and this Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claim) shall be governed by, and construed in accordance with, the laws of England and Wales without giving effect to any choice of law or conflict of laws provision or rule (whether of England and Wales or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than England and Wales. Subject to Clause 16 and the following section, each Party irrevocably submits to the sole and exclusive jurisdiction of any court sitting in England and Wales in any action or proceeding arising out or relating to this Agreement its subject matter or formation (including non-contractual disputes or claims) and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. The Provisions of the United Nations Conventions on Contracts for the International Sale of Goods of 1980 shall not apply to this Agreement.
- 21.3 If the Client is located within North America, the Client shall contract with the Concentra entity named on the Order Form and this Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claim) shall be governed by, and construed in accordance with, the domestic laws of the State of New York without giving effect to any choice of law or conflict of laws provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than State of New York. Subject to Clause 16 and the following section, each Party irrevocably submits to the sole and exclusive jurisdiction of any court sitting in New York in any action or proceeding arising out or relating to this Agreement its subject matter or formation (including non-contractual disputes or claims) and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. The Provisions of the United Nations Conventions on Contracts for the International Sale of Goods of 1980 shall not apply to this Agreement.