

CONTRACTOR AGREEMENT GUIDANCE NOTE AND TEMPLATE AGREEMENT

In the course of running your social enterprise, you may hire contractors to provide services to you instead of employing them as a member of staff (employee). As contractors are not employees, their relationship with your social enterprise will need to be set out in a different kind of agreement.

By reading this guide you will understand the typical terms used in a contractor agreement and will have a sample agreement to use as a guide when using the services of a contractor.

For more information on contractors, please visit: <https://www.gov.uk/employment-status/selfemployed-contractor>

CONTRACTOR AGREEMENT GUIDANCE NOTE



OUTLINE

A contractor agreement is a contract (you'll find a template example attached to/with these guidance notes).

Contractors provide professional services such as consultancy, IT services, electrical services and engineering services. They are not an employee, so you and they will sign a contractor agreement.

By each signing the contractor agreement, both parties are obliged to comply with the written agreement.

*Note: these guidance notes focus on the agreement for provision of **services** (not goods) by a sole contractor.*



GLOSSARY OF TERMS

Please see below terms which may be found in a Contractor Agreement:

Best Industry Practice means the best possible standard of service that is achievable within the relevant industry.

Best Endeavours means a party's best efforts to achieve whatever has been agreed. This is sometimes negotiated against and alternatively, 'reasonable' endeavours is used. The word reasonable effectively means what a prudent person would deem reasonable

taking into account the particular circumstances. These words are not always defined throughout an agreement, as can be seen within the Contractor Agreement, which ultimately serves slight ambiguity on the extent to which the party having to use its best endeavours is required to go to ensure compliance.

Bribery Act means the law surrounding the criminal act of bribery. Most contracts incorporate an anti-bribery provision obliging the contractor to carry out the service in accordance with this law. This is seen at clause 3.9.1 and 3.9.2.

Business Days means Monday to Friday, excluding public holidays in England and Wales.

Business of the Client means the activities carried out by the company in receipt of the contractor's services. From a drafting perspective, if it is the contractor producing the first draft of the agreement, it is worth engaging the client when providing this definition.

Capacity means the form in which a party is acting in relation to the other. For example, one may or may not act as agent, consultant, director, employee for the other.

Client means the business receiving the contractor's services.

Commencement Date means the date upon which the agreement is to take effect from (usually the date of signature by the parties).

Confidential Information means all information that is passed between the parties to the agreement which either party would not wish for the public to be informed of.

Data Protection Legislation means the laws surrounding the protection of an individual's data and regulations relating to the processing of an individual's data and privacy, including any guidance or codes of practice issued by the Information Commissioner (the body responsible for the promotion and enforcement of the Freedom of Information Act 2002). This definition typically includes the Data Protection Act 1998 and all applicable and equivalent laws in other countries.

Engagement means the terms of the agreement that the contractor is engaged with providing its services to the client.

Force Majeure Event means a cause that impedes a party from fulfilling its obligations under the agreement arising from an act or event beyond its control such as acts of God, terrorism, riots, war, storms, fires, floods, or any other natural disasters.

Group Company means the client and its associated companies (e.g. subsidiaries, holding company).

Insurance Policies means any policy of insurance taken out by the contractor in accordance with the terms of the Contractor Agreement. These insurance policies are typically taken out to cover the risk of any losses incurred by the client during the provision of services.

Intellectual Property means essentially the collaboration and protection of ideas. Intellectual property rights comprise of those such as (but are not limited to) trademarks, registered designs and domain names and applications for any of the foregoing.

Invention means any innovations or ideas of any kind made by the contractor whether or not patented or recorded in any form.

Pre-Contractual Statement means an agreement or understanding of any party in connection with the engagement but other than explicitly stated within the contractor's agreement.

Services means the services that are being provided by the contractor.

Sub-Contract means a contract between the contractor and a third party to perform services on behalf of the contractor.

Sub-Contractor means the third party instructed to perform the obligations under the sub-contract.

Substitute means someone other than the contractor appointed to provide the services on its behalf, for example, where the contractor has fallen ill.

Termination Date means the date of which the contractor's services come to an end.

Works means all the materials produced by the contractor in the supply of the services.



TYPICAL TERMS COMPRISED WITHIN A CONTRACTORS' AGREEMENT

1. PARTIES

The parties should be identified at the outset of the agreement. It is common practice to define each of the parties to single wording such as “contractor” and “client” for ease of reference throughout the document.

2. BACKGROUND

The purpose of this clause is to set out the reasons for the agreement and to provide details of any terms or agreements that are already in place between the parties that are relative to the contractor’s agreement. It is useful to briefly set out the proposed new terms of the service to be supplied and any complexities of the agreement.

3. INTERPRETATION AND DEFINITIONS

The definitions and interpretation clauses contain words that are repeatedly used throughout the agreement and should always be tailored to suit the agreement you are creating. If a standard precedent document is being referred to in order to help draft the agreement and it contains definitions, always consider whether they are appropriate to the agreement that is being drafted prior to inserting them therein.

4. TERM OF ENGAGEMENT

This clause documents the parties’ intentions to undertake the obligations in accordance with the agreement and the date of which the provision of services is to commence. Where there is no separate clause relating to commencement and term, then this clause should provide for the duration of which the services are to be carried out.

5. DUTIES AND OBLIGATIONS

The responsibilities of the contractor and the client will be recorded in the body of the agreement. This is to ensure that the contractor and the client understand the obligations that each party bears responsibility for.

Common obligations on the contractor will include (but are not limited to) the following:

- Carrying out the services with reasonable care and skill.

- Carrying out the services within [X] days/months or, within a reasonable time where not specified within the agreement.
- General duties of the contractor to comply with relevant legislation (e.g. bribery laws) or policies (e.g. health and safety practices) when carrying out the services.
- To carry out the services in accordance with fixed standards of service known as service levels.
- To appoint a substitute contractor in the event of absence or illness.

The obligations are negotiable between the parties and should be used to record the fundamental terms of the agreement and which party is burdened with the responsibility of carrying them out.

From a contractor’s perspective, words such as “best endeavours” or “best efforts” might be replaced with “reasonable” which is generally seen as a lower standard.

6. FEES

This clause records the remuneration to be paid by the client on receipt of the services. It should detail exactly how the payments/charges are incurred and the timescale for the payments. It is important for this clause to be as clear as possible to avoid any disputes occurring over how much is owed or becoming due. The agreement should clearly state whether fees are inclusive or exclusive of VAT and other applicable sales taxes.

Contractors may wish to include a provision for increasing their charges upon giving notice to the client. The client in turn, may wish to limit the increase, for example, by putting a percentage limitation on any increase. Usually, the agreement will provide that if the contractor increases the charges for its service, the client may terminate the agreement.

Clause 4.3 confers the right on the client to set off any sum of money that it may owe, in relation to the receipt of the services, against any money owed to the contractor. This gives the client greater comfort as it effectively has control over the sums paid to the contractor where that contractor may owe sums to the client. From a contractor’s perspective this needs careful consideration, as does any provision impeding the process of payment for services provided.

7. EXPENSES

The agreement should clearly set out the expenses of which a contractor is entitled to claim from the client and what (if any) expenses are to be borne by the contractor itself. Expressly stating this in the agreement will avoid any confusion and ambiguity over what the contractor is entitled to be reimbursed for and what costs it must bear itself.

8. OTHER ACTIVITIES

It is important to the client that the contractor will not engage in any activities that may cause the contractor to breach any of its obligations under the agreement. However, an absolute restriction on the contractor carrying out any other activities throughout the duration of the agreement could be deemed unnecessary and even anti-competitive. Therefore, a happy medium may be for the client to only preclude the contractor carrying out activities for competitors of the client but again care must be taken here to ensure the provision is not an unfair and unlawful restraint on trade. It is also common for this restriction to be alleviated in certain situations such as where prior written consent has been obtained by the client.

Notwithstanding the above, the client will usually seek to include a provision giving it priority over other activities as can be identified in clause 6.1.3.

9. CONFIDENTIAL INFORMATION

Confidentiality provisions exist within most commercial contracts to ensure that any sensitive information passed between the parties in connection with providing or receiving the services, will not be disclosed to anyone, other than the parties to the agreement.

The definition of the confidential information is the essential component of this clause. It is important to ensure that the clause is wide enough to encompass all of the information that the parties wish to include within the definition.

10. DATA PROTECTION

This part of the agreement is to give comfort to the contractor that the client will comply with the data protection legislation and will observe all of its obligations under the Data Protection Act 1998, which arise in relation to the agreement.

11. INTELLECTUAL PROPERTY

The contractor will typically wish to retain all ownership rights over the intellectual property it owns prior to commencement of the provision of the services. However, who owns a new intellectual property created as part of the services will be the subject of discussion. If the contractor agrees to the client owning new intellectual property, the client will want a clause within the agreement to cater for the assignment of these rights over to it.

Where the contractor is using intellectual property belonging to a third party the client will seek assurances from the contractor that it has necessary rights to grant a licence to the customer to use the third party intellectual property. Typically the contractor will also be required to provide an indemnity to the client for any costs, claims, damages or expenses incurred by the client in respect of any intellectual property infringement.

Clause 9 consists of undertakings (contractual promises) and warranties (guarantees) made by the contractor for the benefit of the client and also restricts the contractor from claiming any further fees than expressly set out in clause 4.

12. INSURANCE AND LIABILITY

The contractor will be personally liable for any losses incurred by the client in relation to the services provided. Thus, the client will want to ensure that the contractor takes out an insurance policy that will cover the risk of any claims made by the client in relation to the provision of the services carried out by the contractor.

This clause will usually provide for the contractor to obtain an insurance policy with a reputable insurer, possibly subject to the client's approval, to insure against the risk of any claim by the client for any loss, costs, damages or expenses it has incurred as a result of the contractor's breach of the terms within the agreement. This can be seen at clause 10.2 of the Contractor Agreement.

As clause 10.4 of the Contractor Agreement illustrates, the client may insert a provision that affords it direct receipt of any insurance monies paid out in connection with any claim made by the client (rather than the money first being paid to the contractor, as policy holder). The client's interest therefore is usually noted on the insurance policy to give effect to this.

Under no circumstances can a contractor attempt to exclude liability for death or personal injury caused by its negligence and any clause attempting to do so will be unenforceable.

13. TERMINATION

The events upon which each party can terminate are defined within this clause of the agreement. Common clauses which give a party the right to terminate an agreement are instances where one party breaches the agreement by not complying with their obligations contained therein. Often where there is a breach by one party this clause will provide that the other party is entitled to terminate the agreement with immediate effect upon written notice.

Other standard termination provisions where no fault has occurred on behalf of either party, include the right to terminate upon a number of months' written notice. However, in this instance, the contractor may insist on the payment of an early termination fee, particularly where it has not been able to recover costs through the charges.

14. OBLIGATIONS ON TERMINATION

Once an agreement has been terminated, the parties may be uncomfortable with the fact that the other party possesses specific knowledge, such as information that came to light when negotiating the contract and throughout the duration of the provision of the services and which is deemed confidential. Therefore, it is important to set out the obligations to return such data and delete such information stored for the purposes of the agreement upon termination of the agreement.

15. STATUS

For clarity, it is advisable to include the relationship status of the parties – that it is a contract for services, not a contract of employment.

Even with explicitly stating the relationship between the parties, it is still not definite that the relationship will not be considered to be an employment relationship, however, by expressly stating it within the body of the agreement it goes some way towards highlighting the intention of the parties when the agreement was entered into.

This clause, whilst emphasising that an employment relationship is not intended, will nevertheless include an indemnity provision stating that the contractor will indemnify the client in relation to any liability arising from an employment related claim and any income tax, national insurance or any other liability incurred by the client in connection with the provision of the services.

The client may wish for extra protection and thus, a provision permitting the client to satisfy such an indemnity by way of deduction from any payments due to the contractor may be included (as can be seen at clause 13.3 of the Contractor Agreement).

In order to ensure that the relationship between the client and the contractor is not considered an employer/employee relationship, the agreement should encompass as many self-employment indicators as possible. The fundamental reason for this is so to circumvent the liabilities that come with an employment relationship.

16. NOTICES

This clause sets out the procedure in which a notice should be served by either party to the other party and when such a notice is to be deemed delivered to the receiving party.

For example, a document sent by first class post, marked for the attention of X at the address set out in this agreement and shall be deemed to be received 72 hours after posting.

It is advisable to record the deemed delivery date for each notice sent to avoid any disputes.

17. ENTIRE AGREEMENT

This is a standard clause that is inserted into most commercial agreements and has the effect of making the content of the present agreement the document that contains the entire agreement between the parties and which supersedes any previous agreements (for example, any statements or representations that were made between the parties prior to signature of the agreement and which are not included within the agreement).

18. FORCE MAJEURE

A force majeure clause circumvents liability incurred where one party is unable to fulfil its obligations under the agreement due to an event occurring beyond its reasonable control such as a fire or explosion.

The events that cause a force majeure tend to be defined within the definitions and interpretation clause of the agreement and any events that the parties consider should not be classed as a force majeure event should be expressly excluded within the definition.

19. VARIATION

The purpose of this clause is to prohibit any variation to the agreement without the agreement of both parties.

20. COUNTERPARTS

For ease, and instead of circulating the same agreement between the parties for signature, this clause allows for both parties to sign their own copy of the agreement, rather than each party having to execute one single document.

21. THIRD PARTY RIGHTS

Legislation such as the Contract (Rights of Third Parties) Act 1999 confers rights on third parties (persons not a party signatory to the agreement) to enforce a term of the contract against the parties to that contract.

This clause can be excluded if both parties wish for the operation of the above legislation not to apply to the agreement. The exclusion of the clause will mean that the parties are free to change or terminate the agreement as they please, without having to obtain any third party consents.

Clause 19 of the Contractor Agreement expressly excludes any third party rights, leaving the parties free deal with the agreement as they see fit, without having to obtain any other consents except that of the other named party to the agreement.

The contracts (Rights of Third Parties) Act 1999 does not apply in Scotland therefore this clause should be deleted for Scottish agreements.

22. GOVERNING LAW AND JURISDICTION

It is important to include a clause specifying the law that will apply to the interpretation of the agreement and its effect in the event of a dispute arising between the parties to the agreement.

This clause should only record the law that governs any disputes, not the procedure to follow in the event of a dispute.



SERVICES TO BE PROVIDED

The services to be provided to the client will be set out to ensure that both parties are aware of what has to be done in order to fulfil the obligations under the agreement and so that the client, in particular, knows what service it can expect to receive.

It is imperative that the services are clearly set out to avoid any ambiguity over what is to be supplied/ received.

CONTRACTOR AGREEMENT TEMPLATE

Please note this agreement is a very comprehensive agreement which should be considered and adapted for your business and business needs. The agreement is intended for a well developed business. Please carefully consider the template terms and guidance to assess your needs and seek legal advice if further advice and assistance is required.

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BETWEEN:

- (1) [NAME OF COMPANY REQUESTING SERVICES] incorporated and registered in England and Wales with company number [INSERT NUMBER] whose registered office is at [INSERT REGISTERED OFFICE] (“**Client**”)
- (2) [NAME OF CONTRACTOR PROVIDING SERVICES] whose address is at [INSERT ADDRESS] (“**Contractor**”)

BACKGROUND

The Client wishes to engage the Contractor for the provision of its services and the Contractor is willing to provide the Services to the Client as set out in the schedule and in accordance with this agreement.

**IT IS AGREED:****I. INTERPRETATION**

- I.1 The definitions and rules of interpretation in this clause apply in this agreement (unless the context requires otherwise).

“**Business of the Client**” means [INSERT THE CLIENT’S MAIN BUSINESS PURPOSE AND ACTIVITIES]

“**Business Days**” means Monday to Friday, excluding public holidays in England and Wales.

“**Capacity**” means as agent, contractor, director, employee, owner, partner, shareholder or in any other capacity.

“**Commencement Date**” means the date hereof.

“**Confidential Information**” means information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of the Client [or any Group Company] for the time being confidential to the Client [or any Group Company] and trade secrets including, without limitation, technical data and know-how relating to the Business of the Client [or of any Group Company] or any of its [or their] suppliers, customers, agents, distributors, shareholders, management or business contacts, including in particular (by way of illustration only and without limitation) [LIST EXAMPLES] and including (but not limited to) information that the Contractor creates, develops, receives or obtains

in connection with his Engagement, whether or not such information (if in anything other than oral form) is marked confidential.

“**Engagement**” means the engagement of the Contractor by the Client on the terms of this agreement.

“**Force Majeure Event**” means any circumstance not within a party’s reasonable control including, but without limitation, acts of God, flood, drought, earthquake or other natural disaster, epidemic, pandemic, terrorist attack, civil war, civil commotion or riots, war, threats of or preparation for war, armed conflict, imposition of sanctions, embargo, nuclear boom, collapse of buildings, fire, explosion, interruption of utility service and any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition.

[“**Group Company**” means the Client, its subsidiaries or holding companies (as defined in section 1159 of the Companies Act 2006) from time to time and any subsidiary of any holding company from time to time.]

“**Insurance Policies**” means the policies of insurance taken out in accordance with the terms of this agreement.

“**Intellectual Property Rights**” means patents, rights to inventions, copyright and related rights, moral rights, trade marks, trade names and domain

names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

“**Invention**” means any invention, idea, discovery, development, improvement or innovation made by the Contractor in the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.

“**Pre-Contractual Statement**” means any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the Engagement other than as expressly set out in this agreement [or any documents referred to in it].

“**Services**” means the services provided by the Contractor for the Client [or any Group Company] as more particularly described in the schedule.

“**Substitute**” means a substitute engaged by the Contractor under the terms of clause 3.3.

“**Termination Date**” means the date of termination of this agreement, howsoever arising.

“**Works**” means all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by the Contractor in the provision of the Services.

- 1.2 The headings in this agreement are inserted for convenience only and shall not affect its construction.
- 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.6 The schedule to this agreement forms part of (and is incorporated into) this agreement.



2. TERM OF ENGAGEMENT

- 2.1 The Client shall engage the Contractor and the Contractor shall provide the Services on the terms of this agreement.
- 2.2 The Engagement shall commence on the Commencement Date and shall continue unless and until terminated:
 - 2.2.1 as provided by the terms of this agreement; or
 - 2.2.2 by either party giving to the other not less than [4] weeks' prior written notice.



3. DUTIES AND OBLIGATIONS

- 3.1 During the Engagement the Contractor shall:
- 3.1.1 provide the Services with all due care, skill and ability and use its best endeavours to promote the interests of the Client [or any Group Company];
 - 3.1.2 unless prevented by ill health or accident, devote at least [INSERT NUMBER] [hours **OR** days] in each calendar month to the carrying out of the Services together with such additional time if any as may be necessary; and
- 3.2 If the Contractor is unable to provide the Services due to illness or injury, he shall advise the Client of that fact as soon as reasonably practicable. For the avoidance of doubt, no fee shall be payable in accordance with clause 4 in respect of any period during which the Services are not provided.
- 3.3 The Contractor may, with the prior written approval of the Client and subject to the following proviso, appoint a suitably qualified and skilled Substitute to perform the Services on his behalf, provided that the Substitute shall be required to enter into direct undertakings with the Client, including with regard to confidentiality. If the Client accepts the Substitute, the Contractor shall continue to invoice the Client in accordance with clause 4 and shall be responsible for the remuneration of the Substitute. For the avoidance of doubt, the Contractor will continue to be subject to all duties and obligations under this agreement for the duration of the appointment of the Substitute.
- 3.4 The Contractor shall use reasonable endeavours to ensure that he is available at all times on reasonable notice to provide such assistance or information as the Client may require.
- 3.5 Unless he has been specifically authorised to do so by the Client in writing, the Contractor shall not:
- 3.5.1 have any authority to incur any expenditure in the name of or for the account of the Client; or
 - 3.5.2 hold itself out as having authority to bind the Client.
- 3.6 The Contractor shall comply with all reasonable standards of safety and comply with the Client's health and safety procedures from time to time in force at the premises where the Services are provided and report to the Client any unsafe working conditions or practices.
- 3.7 The Contractor shall comply with the Client's policies on [LIST ANY RELEVANT POLICIES].
- 3.8 The Contractor may use a third party to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that:
- 3.8.1 the Client will not be liable to bear the cost of such functions; and
 - 3.8.2 at the Client's request the third party shall be required to enter into direct undertakings with the Client, including with regard to confidentiality.
- 3.9 The Contractor shall:
- 3.9.1 comply with all applicable laws, policies, regulation codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
 - 3.9.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 3.9.3 promptly report to the Client any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of this agreement;
 - 3.9.4 ensure that all persons associated with the Contractor or other persons who are performing services [or providing goods] in connection with this agreement comply with this clause 3.9; and
 - 3.9.5 within [2] months of the date of this agreement, and annually thereafter, certify to the Client in writing, his compliance with this clause 3.9. The Contractor shall provide such supporting evidence of compliance as the Client may reasonably request.
 - 3.9.6 Failure to comply with clause 3.9 may result in the immediate termination of this agreement.



4. FEES

- 4.1 The Client shall pay the Contractor a fee of £[INSERT AMOUNT] per [hour **OR** day] [exclusive **OR** inclusive] of VAT. On the last working day of each month during the Engagement the Contractor shall submit to the Client an invoice which gives details of the [hours **OR** days] the Contractor or any Substitute has worked during the month, the Services provided and the amount of the fee payable (plus VAT, if applicable) for the Services during that month.
- 4.2 In consideration of the provision of the Services during the Engagement, the Client shall pay each invoice submitted by the Contractor in accordance with clause 4.1 within [30] days of receipt.
- 4.3 The Client shall be entitled to deduct from the fees (and any other sums) due to the Contractor any sums that the Contractor may owe to the Client [or any Group Company] at any time.
- 4.4 Payment in full or in part of the fees claimed under this clause 4 or any expenses claimed under clause 5 shall be without prejudice to any claims or rights of the Client [or any Group Company] against the Contractor in respect of the provision of the Services.



5. EXPENSES

- 5.1 The Client shall reimburse all reasonable expenses properly and necessarily incurred by the Contractor in the course of the Engagement, subject to production of receipts or other appropriate evidence of payment **OR** The Contractor shall bear his own expenses incurred in the course of the Engagement.
- 5.2 If the Contractor is required to travel abroad in the course of the Engagement he shall be responsible for any necessary insurances, inoculations and immigration requirements.



6. OTHER ACTIVITIES

- 6.1 Nothing in this agreement shall prevent the Contractor from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement provided that:
- 6.1.1 such activity does not cause a breach of any of the Contractor's obligations under this agreement;
- 6.1.2 the Contractor shall not engage in any such activity if it relates to a business which is similar to or in any way competitive with the Business of the Client [or any Group Company] without the prior written consent of the Client; and
- 6.1.3 the Contractor shall give priority to the provision of the Services to the Client over any other business activities undertaken by the Contractor during the course of the Engagement.



7. CONFIDENTIAL INFORMATION

- 7.1 The Contractor acknowledges that in the course of the Engagement he will have access to Confidential Information. The Contractor has therefore agreed to accept the restrictions in this clause 7.
- 7.2 The Contractor shall not (except in the proper course of its duties), either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use his best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:
- 7.2.1 any use or disclosure authorised by the Client or required by law; or
- 7.2.2 any information which is already in, or comes into, the public domain otherwise than through the Contractor's unauthorised disclosure.
- 7.3 At any stage during the Engagement, the Contractor will promptly on request return to the Client (if possible) or destroy any Confidential Information in his possession.



8. DATA PROTECTION

- 8.1 The Contractor consents to the Client [and any Group Company] holding and processing data relating to him for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" (as defined in the Data Protection Act 1998) relating to the Contractor including, as appropriate:
- 8.1.1 information about the Contractor's physical or mental health or condition in order to monitor sickness absence;
- 8.1.2 the Contractor's racial or ethnic origin or religious or similar beliefs in order to monitor compliance with equal opportunities legislation;
- 8.1.3 information relating to any criminal proceedings in which the Contractor has been involved, for insurance purposes and in order to comply with legal requirements and obligations to third parties; and
- 8.1.4 *[LIST ANY OTHER SENSITIVE DATA TO BE PROCESSED]*.
- 8.2 The Contractor consents to the Client making such information available to [any Group Company and] those who provide products or services to the Client [and any Group Company] such as advisers, regulatory authorities, governmental or quasi governmental organisations and potential purchasers of the Client [or the Group] or any part of its business.
- 8.3 The Contractor shall comply with the Client's data protection policy and relevant obligations under the Data Protection Act 1998 and associated codes of practice when processing personal data relating to any employee, worker, customer, client, supplier or agent of the Client.



9. INTELLECTUAL PROPERTY

- 9.1 The Contractor hereby assigns to the Client all existing and future Intellectual Property Rights in the Works and the Inventions and all materials embodying these rights to the fullest extent permitted by law. Insofar as they do not vest automatically by operation of law or under this agreement, the Contractor holds legal title in these rights and inventions on trust for the Client.
- 9.2 The Contractor undertakes:
- 9.2.1 to notify to the Client in writing full details of any Inventions promptly on their creation;
- 9.2.2 to keep confidential details of all Inventions;
- 9.2.3 whenever requested to do so by the Client and in any event on the termination of the Engagement, promptly to deliver to the Client all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the Works and the process of their creation which are in his possession, custody or power;
- 9.2.4 not to register nor attempt to register any of the Intellectual Property Rights in the Works, nor any of the Inventions, unless requested to do so by the Client; and
- 9.2.5 to do all acts necessary to confirm that absolute title in all Intellectual Property Rights in the Works and the Inventions has passed, or will pass, to the Client.
- 9.3 The Contractor warrants to the Client that:
- 9.3.1 he has not given and will not give permission to any third party to use any of the Works or the Inventions, nor any of the Intellectual Property Rights in the Works;
- 9.3.2 he is unaware of any use by any third party of any of the Works or Intellectual Property Rights in the Works; and
- 9.3.3 the use of the Works or the Intellectual Property Rights in the Works by the Client will not infringe the rights of any third party.
- 9.4 The Contractor agrees to indemnify the Client and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Client, or for which the Client may become liable, with respect to any intellectual property infringement claim or other claim relating to the Works or Inventions supplied by the Contractor to the Client during the course of providing the Services. The Contractor shall maintain adequate liability insurance coverage and ensure that the Client's interest is noted on the policy, and shall supply a copy of the policy to the Client on request. The Client may at its option satisfy this indemnity (in whole or in part) by way of deduction from any payments due to the Contractor.
- 9.5 The Contractor waives any moral rights in the Works to which he is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, including (but without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute, support, maintain or permit any action or claim to the effect that any treatment, exploitation or use of such Works or other materials infringes the Contractor's moral rights.
- 9.6 [The Contractor acknowledges that, except as provided by law, no further fees or compensation other than those provided for in this agreement are due or may become due to the Contractor in respect of the performance of his obligations under this clause 9.]
- 9.7 The Contractor undertakes, at the expense of the Client, at any time either during or after the Engagement, to execute all documents, make all applications, give all assistance and do all acts and things as may, in the opinion of the Client, be necessary or desirable to vest the Intellectual Property Rights in, and to register them in, the name of the Client and to defend the Client against claims that works embodying Intellectual Property Rights or Inventions infringe third party rights, and otherwise to protect and maintain the Intellectual Property Rights in the Works and the Inventions.
- 9.8 The Contractor irrevocably appoints the Client to be his attorney in his name and on his behalf to execute documents, use the Contractor's name and do all things which are necessary or desirable for the Client to obtain for itself or its nominee the full benefit of this clause. A certificate in writing, signed by any director or the secretary of the Client, that any instrument or act falls within the authority conferred by this agreement shall be conclusive evidence that such is the case so far as any third party is concerned.



10. INSURANCE AND LIABILITY

- 10.1 The Contractor shall have personal liability for and shall indemnify the Client [and any Group Company] for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Contractor or a Substitute engaged by the Contractor of the terms of this agreement including any negligent or reckless act, omission or default in the provision of the Services and shall accordingly maintain in force during the Engagement full and comprehensive Insurance Policies.
- 10.2 The Contractor shall ensure that the Insurance Policies are taken out with reputable insurers acceptable to the Client and that the level of cover and other terms of insurance are acceptable to and agreed by the Client.
- 10.3 The Contractor shall on request supply to the Client copies of such Insurance Policies and evidence that the relevant premiums have been paid.
- 10.4 The Contractor shall notify the insurers of the Client's interest and shall cause the interest to be noted on the Insurance Policies together with a provision to the effect that, if any claim is brought or made by the Client against the Contractor in respect of which the Contractor would be entitled to receive indemnity under any of the Insurance Policies, the relevant insurer will indemnify the Client directly against such claim and any charges, costs and expenses in respect of such claim. If the relevant insurer does not so indemnify the Client, the Contractor shall use all insurance monies received by him to indemnify the Client in respect of any claim and shall make good any deficiency from his own resources.
- 10.5 The Contractor shall comply with all terms and conditions of the Insurance Policies at all times. If cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way or if the Contractor is aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Contractor shall notify the Client without delay.



11. TERMINATION

- 11.1 Notwithstanding the provisions of clause 2.2, the Client may terminate the Engagement with immediate effect with no liability to make any further payment to the Contractor (other than in respect of amounts accrued before the Termination Date) if at any time the Contractor:
- 11.1.1 commits any gross misconduct affecting the Business of the Client [or any Group Company];
 - 11.1.2 commits any serious or repeated breach or non-observance of any of the provisions of this agreement or refuses or neglects to comply with any reasonable and lawful directions of the Client;
 - 11.1.3 is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);
 - 11.1.4 is in the reasonable opinion of the Client negligent or incompetent in the performance of the Services;
 - 11.1.5 is declared insolvent or makes any arrangement with or for the benefit of its creditors;
 - 11.1.6 is incapacitated (including by reason of illness or accident) from providing the Services for an aggregate period of [25] days in any [52 week] consecutive period;
 - 11.1.7 commits any fraud or dishonesty or acts in any manner which in the opinion of the Client brings or is likely to bring the Contractor or the Client [or any Group Company] into disrepute or is materially adverse to the interests of the Client [or any Group Company];

11.1.8 commits any breach of the Client's policies and procedures; or

11.1.9 commits any offence under the Bribery Act 2010.

11.2 The rights of the Client under clause 11.1 are without prejudice to any other rights that it might have at law to terminate the Engagement or to accept any breach of this agreement on the part of the Contractor as having brought the agreement to an end. Any delay by the Client in exercising its rights to terminate shall not constitute a waiver of these rights.

11.3 The Contractor may terminate the Engagement with immediate effect if at any time the Client:

11.3.1 commits any serious or repeated breach or non-observance of any of the provisions of this agreement; or

11.3.2 is declared insolvent or makes any arrangement with or for the benefit of its creditors or is deemed unable to pay its debts under any relevant legislation.

11.4 Either party may terminate this agreement by giving to the other not less than [4] weeks' prior written notice.



12. OBLIGATIONS ON TERMINATION

12.1 On the Termination Date the Contractor shall:

12.1.1 irretrievably delete any information relating to the Business of the Client [or any Group Company] stored on any magnetic or optical disk or memory and all matter derived from such sources which is in his possession or under his control outside the premises of the Client. For the avoidance of doubt,

the contact details of business contacts made during the Engagement are regarded as Confidential Information, and as such, must be deleted from personal social or professional networking accounts; and

12.1.2 provide a signed statement that he has complied fully with his obligations under this clause 12.



13. STATUS

13.1 The relationship of the Contractor to the Client will be that of independent contractor and nothing in this agreement shall render him an employee, worker, agent or partner of the Client and the Contractor shall not hold himself out as such.

13.2 This agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Contractor shall be fully responsible for and shall indemnify the Client [or any Group Company] for and in respect of:

13.2.1 any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law. The Contractor shall further indemnify the

Client against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Client in connection with or in consequence of any such liability, deduction, contribution, assessment or claim [other than where the latter arise out of the Client's negligence or wilful default];

13.2.2 any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Contractor or any Substitute against the Client arising out of or in connection with the provision of the Services.

13.3 The Client may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Contractor.



14. NOTICES

- 14.1 Any notice given under this agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant party at (in the case of the Client) its registered office for the time being and (in the case of the Contractor) his last known address, or by sending it by fax to the fax number notified by the relevant party to the other party. Any such notice shall be deemed to have been received:
- 14.1.1 if delivered personally, at the time of delivery;
 - 14.1.2 in the case of pre-paid recorded delivery or registered post, [48] hours from the date of posting; and
 - 14.1.3 in the case of fax, at the time of transmission.
- 14.2 In proving such service it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post or that the notice was transmitted by fax to the fax number of the relevant party.



15. ENTIRE AGREEMENT AND PREVIOUS CONTRACTS

- 15.1 Each party on behalf of itself [(and, in the case of the Client, as agent for any Group Companies)] acknowledges and agrees with the other party [(the Client acting on behalf of itself and as agent for each Group Company)] that:
- 15.1.1 this agreement together with any documents referred to in it constitutes the entire agreement and understanding between the Contractor and the Client [and any Group Company] and supersedes any previous arrangement, understanding or agreement between them relating to the Engagement (which shall be deemed to have been terminated by mutual consent);
 - 15.1.2 in entering into this agreement neither party [nor any Group Company] has relied on any Pre-Contractual Statement; and
- 15.2 each party agrees that the only rights and remedies available to it or arising out of or in connection with any Pre-Contractual Statement shall be for breach of contract. Nothing in this agreement shall, however, limit or exclude any liability for fraud.



16. FORCE MAJEURE

- 16.1 If a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (“Affected Party”), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 16.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 16.3 The Affected Party shall:
- 16.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than [5] Business Days from its start, notify the other party in writing of the

Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and

16.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

16.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than [4] weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving [2] weeks' written notice to the Affected Party.

16.5 If the Force Majeure Event prevails for a continuous period of more than [2] months, either party may terminate this agreement by giving [14] days' written notice to all the other party. On the expiry of this notice period, this agreement and the relevant Service Contract will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination.



17. VARIATION

No variation of this agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.



18. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.



19. THIRD PARTY RIGHTS

19.1 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.

19.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any person that is not a party to this agreement.



20. GOVERNING LAW AND JURISDICTION

20.1 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 claims) shall be governed by and construed in accordance with the law of England and Wales.

20.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or

in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.



SCHEDULE I: SERVICES

[This should include the following matters:

- *details of the work to be carried out;*
- *the location(s) where the services are to be performed;*
- *reporting procedure;*
- *any milestones for completion of particular projects; and*
- *whether the services will need to be provided to any other group companies]*

Executed as a deed for and behalf of the [CLIENT] acting by:

Signature_____

Name (block capitals)_____

Director

Executed as a deed by [CONTRACTOR]

Signature_____

Name (block capitals)_____

Contractor

Witness signature_____

Name (block capitals):_____

Witness Address:_____

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