

Central Mailing Services Supplier Terms & Conditions

This Supplier Terms and Conditions document for Services (this “**Agreement**”)

BETWEEN

Central Mailing Services (the “**Client**”) whose registered offices are situated at Units 59 – 60 Gravelly Industrial Park, Erdington, Birmingham, B24 8TQ with Company registration number: 03720150.

And the Client’s Suppliers

These Terms take precedence over any & all other Terms & automatically become effective upon an order / transaction between the Client & its Suppliers / Supply Chain.

BACKGROUND

(A) The Client has a UK based Print and Mail Production business specialising in co ordinating campaigns through data, design, print, digital and direct marketing output, transactional mail, warehousing, fulfilment, and distribution.

(B) The Company offers certain Services that are suitable for the Client’s requirements. It is the Company’s responsibility to ensure they understand the Client’s Services requirements fully.

(C) The Client wishes to appoint the Company on an ad hoc basis to provide the Services (or a part of the Services) to the Client and/or its Affiliates (defined below) all in accordance with the terms of this Agreement.

NOW IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement:

“Affiliates” means in relation to either party, any corporate legal entity, which from time to time Controls, is Controlled by or is under common Control with that party;

“Agreement” unless the provision requires otherwise (i.e. clause 15.6), means this Agreement, together with all Contracts, the SLA and any other document referred to herein as being subject to and/or governed by this Agreement;

“Contract” means any mutually agreed document through which particular Services are contracted from the Company by the Client or an Affiliate of the Client. Each Contract will be subject to this Agreement and will include the relevant Specifications and/or a purchase order;

“Control” means ownership or control of a majority of the voting rights, or the legal power to direct or cause the direction of the general management of the relevant legal entity (other than any power which arises in connection with administration, receivership or insolvency or appointment as trustee in England and Wales);

“Commencement Date” unless otherwise stated means the date this Agreement is duly signed by both parties;

“Deliverables”	means all documents, products, services and materials developed or produced by the Company or its agents, subcontractors, consultants and employees in relation to the Services;
“Intellectual Property”	means any and all intellectual property rights of any nature anywhere in the world, whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites;
“Insurance”	as defined under UK insurance definitions and criteria and as detailed in clause 22;
“Inventory”	means all inventories of materials and work-in-process produced or held by the Company in connection with the manufacture of the Deliverables;
“Services”	means any of creative, design, image editing, digital media, pre-Press, print, post press, permanent signage, store survey, installation, uninstallation, warehousing, fulfilment and or delivery/postage to the final destination and such other marketing delivery services to be provided by the Company to the Client or an of its Affiliates as agreed in writing from time to time;
“SLA”	means the Service Level Agreement agreed between the parties and set out at Appendix 1 to this Agreement;
“Specifications”	means the document supplied to the Company by the Client or the Client’s Affiliate (as applicable) either in respect of each request for a quote or as a general schedule of agreed processes /methods of working for a particular region or country and which may include the detailed specifications for the Services sought, delivery dates and locations, prototyping and acceptance requirements, and any additional terms applicable. It is agreed that any specific requirements provided for a job will take precedence over a locally agreed general schedule;
“Term”	means the term of this Agreement as determined in accordance with clause 11;
“Transfer of Title”	means ten (10) working days after receipt of an undisputed signed and fully itemised proof of delivery. Items held in stock by the Company for the Client shall remain the responsibility and liability of the Company until the stock is confirmed to be transferred to another party;
“VAT”	means value added tax chargeable under the Value Added Tax Act 1994; and
“Year”	means a period of twelve (12) months from the Commencement Date and each subsequent period of twelve (12) months during the Term of this Agreement.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 Words in the singular shall include the plural and vice versa and words in the masculine shall mean the feminine and vice versa.
- 1.5 A reference to "writing" or "written" includes e-mail.
- 1.6 Where the words "include(s)," "including" or "in particular" are used in this Agreement, they are deemed to have the words without limitation following them.
- 1.7 Where the context permits, the words "other" and "otherwise" are illustrative and shall not limit the sense of the words preceding them.
- 1.8 Any obligation in this Agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.9 References to clauses and schedules are to the clauses and schedules of this Agreement.
- 1.10 Reference to the Client shall, unless the context requires otherwise include the Client's Affiliates where the Contract has been entered into with a Client's Affiliate.

2. APPOINTMENT AND FORMATION OF CONTRACTS

- 2.1 The Client hereby appoints the Company to its and its Affiliates' supplier roster for the non-exclusive provision of the Services and the Company shall supply the Services to the Client and the Client's Affiliates on the terms of this Agreement. The Client shall be under no obligation to request Services from the Company.
- 2.2 The Company shall provide a quote for the Services following receipt of a written Specifications from the Client. If the Company does not wish to provide a quote it must notify the Client within the SLA stipulations (see Appendix 1) of receipt of the Specifications. The Company acknowledges that from time to time the Client may be required to impose additional terms upon the Company in respect of a particular order for Services either on its own account or as a result of a requirement of one of its customers via a Contract. Any such additional terms will be detailed in the Specifications and by submitting a quote the Company agrees to be bound by those additional terms. In the event of any discrepancy between those additional terms contained in the Specifications and the Agreement, the additional terms shall take precedence in relation to that order for Services only (subject to clause 15.6).
- 2.3 If the Client chooses to accept the Company's quote it will issue a purchase order and a Contract will then be formed between the Client and the Customer. Each Contract is distinct and severable. The Company is not permitted to reject a purchase order if it is for the same value as the relevant quote provided.
- 2.4 The Company acknowledges and agrees that it will not commence any Services or incur any related expenses or costs unless and until it has received a purchase order from the Client expressly authorising such Services and costs. The Company further

acknowledges and agrees that it shall not be entitled to recover, and hereby irrevocably waives its right to pursue, any fees, costs, losses or damages from the Client in connection with any Services that were commenced prior to receipt of a purchase order authorising such Services. The Company further agrees and acknowledges that absent a mutually agreed, written and signed amendment to this provision, the foregoing shall be true notwithstanding any representation, promise, assurance, warranty, undertaking or inducement, whether oral or written, made by any employee or agent of the Client. Nothing contained herein shall obligate the Client to issue Specifications or a purchase order under any circumstances.

- 2.5 The Client shall be responsible for ensuring the accuracy of the Specifications for the Services, and providing the Company with any information, which is necessary in order to enable the Company to fulfil the Contract and comply with any applicable legal requirements. The Company must seek clarification from the Client if any aspect of the Specifications is unclear before providing a quote.

3. PRICES, CHARGES AND FREIGHT

- 3.1 All prices quoted by the Company or agreed with the Client and set out in the purchase order are exclusive of VAT which shall be added to its invoices at the appropriate rate and be payable by the Client in addition to the agreed price.
- 3.2 Unless otherwise agreed, the charges payable for the Services shall be calculated on a quote by quote basis and be based upon the best market rates which can be achieved at the time of the quote. The quote must stand for a minimum of sixty working (60) days.
- 3.3 The Client shall not be liable for any overtime and other additional costs or expenses incurred in respect of performance of a Contract unless the Client has provided its prior written consent to such additional charges being incurred.
- 3.4 The Company's charges and associated invoices will always be provided in the currency requested by the Client in the relevant purchase order.

4. DATA

- 4.1 The Company undertakes to the Client that it shall process any personal data (as defined in the UK Data Protection Act 1998 (the "DPA")) in accordance with the DPA and, from 25th May 2018, the General Data Protection Regulation ("GDPR") solely for the purposes of this Agreement and in accordance with the Client's instructions from time to time and for no other purpose. The Company will keep a record of any processing of personal data that it carries out on behalf of the Client. The Company shall promptly comply with any request from the Client requiring the Company to amend, transfer or delete personal data. The Company shall promptly inform the Client if any personal data is lost or destroyed or becomes damaged, corrupted, or unusable. The Company will restore such personal data at its own expense. For the purposes of the DPA the Company shall have the responsibilities as processor and the Client the responsibilities as controller (as such terms are defined in the DPA).
- 4.2 The Company will fully indemnify and hold the Client harmless for all costs, losses, damages, fines or expenses incurred or claimed by the Client as a result of its breach

of clause 4.1 and/or all applicable data protection laws in Europe and the jurisdictions where the Services are provided and delivered.

- 4.3 The Client acknowledges and agrees that details of the Client's name, address and payment record may be submitted to a credit reference agency.
- 4.4 If the Company comes into possession of any third-party data from the Client then the Company must notify the Client immediately in order to ensure the individual associated third-party data policies are adhered to before any work is conducted.

5. SERVICES AND INVENTORY

Services

- 5.1 The Company shall ensure that it procures the production of the material and services by the optimum method of supply, ensuring best value for money and that the quality of the Deliverables is maintained at all times.
- 5.2 The Company is responsible for ensuring that the Deliverables produced by it through the Services:
 - 5.2.1 conform to the Specifications and to the requirements of postal operators (if applicable) or logistics carriers as applicable to the Contract;
 - 5.2.2 are supplied punctually and in accordance with any timings set out in the Specifications and SLA (Appendix 1);
 - 5.2.3 where applicable, are accompanied by a delivery advice note or proof of delivery stating the quantity and description of the materials supplied and a signature of the recipient to ensure Transfer of Title and Risk;
 - 5.2.4 where applicable, are delivered on pallets, boxed, packed and supplied either as required in the Specifications or in such a way as to withstand all normal storage, transportation and handling; and
 - 5.2.5 shall not be or contain anything of a dangerous, damaging, hazardous or contaminative nature which in the opinion of the Client poses a risk to property, life or health.
- 5.3 The Client will not pay for over production of Deliverables. The Company will immediately reimburse the Client for any under production (pro rata in relation to the extent of such under production) unless otherwise agreed in writing at the time.

Inventory

- 5.4 The Client understands and acknowledges that the Company will rely on the purchase orders at all times in ordering or procuring the materials required to meet such purchase orders.
- 5.5 Amendments to the Specifications requested by the Client will only be implemented following a technical and cost review by the Company and are subject to the Client and the Company reaching agreement as to revisions, if any, to the prices necessitated by any such amendment. Amendments to the Specifications requested by the Company will only be implemented following the approval of the Client, such approval not to be unreasonably withheld. If the Client accepts a proposed price

change, the proposed change in the Specifications shall be implemented, and the price change shall become effective only with respect to those orders of Deliverables that are manufactured in accordance with the revised Specifications. Any such revisions, changes and amendments will only be implemented once the parties' agreement to same have been reduced to writing executed by both parties. In addition, the Client agrees to purchase, at the Company's cost therefor (including all costs incurred by the Company in connection with the purchase and handling of such Inventory), all Inventory utilized under the "old" Specifications and purchased or maintained by the Company in order to fill purchase orders, to the extent that such Inventory can no longer be utilized under the revised Specifications. Open orders for Deliverables no longer required under any revised Specifications that were placed by the Company with suppliers in order to fill Client purchase orders shall be cancelled where possible, and where such orders are not subject to cancellation without penalty, shall be assigned to and satisfied by the Client.

- 5.6 Upon (a) termination of this Agreement pursuant to clause 11; or (b) Inventory becoming obsolete due to a rebranding or any other reason outside the Company's control, the Client shall purchase, at the Company's cost (including all costs incurred by the Company in connection with the purchase and handling of such Inventory), all affected Inventory which was purchased, produced or maintained by the Company in contemplation of filling purchase orders received from the Client prior to the Company's receipt of the notice of termination. The Company will invoice the Client for such Inventory according to the provisions of clause 9 of this Agreement.
- 5.7 The Client shall make commercially reasonable efforts, at its own expense, to remove from the Company site(s), within thirty (30) days, all of the Client's Inventory (whether current or obsolete), supplies, undelivered Deliverables, or other moveable property owned by the Client, located at the Company's site or that is otherwise under the Company's care and control (the "**Client Property**"). The Client shall pay to the Company a pre-agreed per pallet per month storage fee for all the Client Property remaining at the Company's site(s) after the sixtieth (60th) day following the completion, termination or expiration of this Agreement or the relevant Contract to which the Inventory relates and will assume any third party storage charges invoiced to the Company regarding any such the Client Property and/or any costs incurred by the Company for the disposal of the Client Property on the Client's behalf. The Company will notify the Client in writing and in advance, the estimated amount of any such storage charges and/or costs and will invoice the Client for same according to the provisions of clause 9 of this Agreement subject to prior agreement.

6. PROTOTYPES AND ACCEPTANCE

Prototypes

- 6.1 Prototypes and proofs (where applicable) of all work including data generated by the Company for the purposes of the Contract shall be submitted for approval by the Client in accordance with the requirements detailed in the relevant Specifications.
- 6.2 In respect of production services, the Company is not permitted to start production of the Deliverables until a final approved prototype has been signed off by the Client

in writing (and if applicable, the end user customer) and a full purchase order with agreed costs is issued.

Acceptance

- 6.3 The Services and the Deliverables must conform to the terms and conditions of the relevant Specifications and be accepted by the Client in accordance with the acceptance process detailed therein. Where no such process is detailed:
 - 6.3.1 the Company must notify the Client when the Deliverables are ready for dispatch and/or the Services are completed; and
 - 6.3.2 the Client must sign off on the Deliverables and/or Services within ten (10) working days' receipt thereof (the "Acceptance Period"); or
 - 6.3.3 the Client must notify the Company of any non-conforming Deliverables and/or Services within the Acceptance Period.
- 6.4 If the Services and/or Deliverables do not conform, and without limiting any other right or remedy that the Client may have, the Client may reject the Deliverables and the Services and:
 - 6.4.1 require the Company to repair or replace the rejected Deliverables and/or re-perform the Services at the Company's risk and expense within the time period specified by the Client, which should not be less than seven (7) working days following notification by the Client; or
 - 6.4.2 require the Company to repay the price of the rejected Deliverables or Services in full (whether or not the Client has previously required the Company to repair or replace the rejected Deliverables or Services); and
 - 6.4.3 require the Company to account to the Client for any service credits due pursuant to the SLA; and
 - 6.4.4 subject to clause 10, claim damages for any other costs, expenses or losses resulting from the Company's delivery of non-conforming Deliverables.
- 6.5 Once the non-conforming Deliverables have been repaired or replaced or the non-conforming Services have been re-performed, they will be subject to the acceptance process set forth in clause 6.1.
- 6.6 If the Company fails to promptly repair or replace the rejected Deliverables and/or re-perform the rejected Services in accordance with clause 6.4 or if the repaired or replaced Deliverables and/or re-performed Services still do not conform to the relevant Specifications, the Client may, and without limiting any other right or remedy that the Client may have:
 - 6.6.1 Repeat the process in clause 6.4 until such time as the rejected Deliverables or Services are accepted; or
 - 6.6.1 obtain substitute Deliverables and/or Services from a third-party supplier or have the rejected Deliverables and/or Services either repaired or re-performed by a third party (as applicable), and the Company shall reimburse the Client for all the costs it incurs in doing so.

- 6.7 If the Client fails to (i) sign off on the Deliverables and/or Services; or (ii) notify the Company of any non-conforming Deliverables and/or Services, either/or within the Acceptance Period, the Deliverables and/or Services will be deemed accepted by the Client.
- 6.8 The Client's rights and remedies under this clause are in addition to any statutory or other implied rights it may have under English law.

7. PERFORMANCE BY THE COMPANY

- 7.1 The Company will perform the Services in accordance with the performance standards and service levels (the "Service Levels") set forth in the SLA attached hereto as Appendix 1. The parties agree that the performance levels and procedures for Services for which no Service Level has been expressly defined shall be consistent with then prevailing best international industry standards for like services, but in no event less than the associated ISO standard.
- 7.3 The Client acknowledges and accepts that the Company cannot be responsible for the actual delivery of the post by any third-party postal supplier (if applicable). In the event of any loss or delay in delivery of post by a third-party postal supplier the Company will at its own cost and expense investigate the complaint with the relevant third-party and use its reasonable endeavours to resolve the problem. In particular, the Company shall be responsible for: (a) managing the performance of any third-party postal supplier until the post has been delivered; (b) maintaining the relationship with the third-party postal supplier globally; and (c) will manage all day-to-day communication with the third-party postal supplier and report back to the Client where appropriate. In particular, the Company shall take all such measures as are reasonably practical to ensure the performance of the third-party postage supplier including but not limited to regular performance management meetings with the third-party postal supplier and regular communication with the third-party postal supplier and the Client on the progress of the mailing.
- 7.4 Subject to the fulfilment of the Company's obligations under clause 7.3 the Client acknowledges and agrees that the Company is not responsible for, and shall have no liability to the Client in respect of any delay or failure in the delivery of the postage services which arise out of any mistakes, inaccuracies or omissions of any third-party postal suppliers ("**Postal Losses**") beyond the compensation the Company is entitled to from such third-party postal suppliers (such compensation, "**Supplier Compensation**"). The Client hereby releases the Company from any Postal Losses, provided that the Company shall use best endeavours (and shall comply with the Client's reasonable instructions) to recover any and all Supplier Compensation that the Company is entitled to under the contract with the third-party postal supplier. All Supplier Compensation shall be promptly paid to the Client. The Client shall supply such reasonable assistance as the Company may request at the Company's expense in connection with recovery of the Supplier Compensation.

8. DELIVERY, OWNERSHIP AND RISK

- 8.1 In respect of any Services, Transfer of Title for the Deliverables passes ten (10) working days after the Client has received a fully signed delivery document and has not disputed any of the Deliverables by the Client. Subject to the Company

complying with the provisions of clause 7.3, Transfer of Title in the Deliverables sent by post (if applicable) shall pass on dispatch by the Company to a reputable third-party postal provider illustrated with a dispatch note.

9. PAYMENT

- 9.1 Subject to clause 9.5, unless the Company otherwise agrees in writing, the Services will be invoiced upon delivery of the Deliverables to the Client (POD). Subject to this clause 9, the Client shall pay each invoice within sixty (60) days from the date of delivery/date of invoice (whichever is later) provided that such invoice complies with the requirements set out in clause 9.3 and is undisputed.
- 9.2 The invoice must not be issued before the date that the full consignment of the Deliverables has been received.
- 9.3 In order to be paid, the invoices must:
- 9.3.1 contain reference to the purchase order number;
 - 9.3.2 be addressed to the Client and the Client's Finance Department;
 - 9.3.3 include an invoice value that matches the purchase order value and must be in the same currency;
 - 9.3.4 where applicable, be accompanied by a signed proof of delivery or a signed proof of collection, whichever is appropriate; and
 - 9.3.5 include any other details required by the Client as set out in the relevant Contract to which the invoice relates.
- 9.5 If the Client receives an invoice which it reasonably believes includes a sum, which is not valid and properly due, the Client shall notify the Company in writing as soon as reasonably practicable, but no longer than ten (10) working days. Any failure to pay the disputed invoice shall not be deemed to be a breach of this Agreement. The Client shall pay the balance of the invoice which is not in dispute by the due date and once the dispute has been resolved, where either party is required to make a balancing payment or reduction in fees, that party shall do so within five (5) working days.
- 9.6 Where the client has procured Recruitment services the client will pay a maximum of a 10% fee based on the Gross Annual salary, as a one-off payment, the following rebates will apply should the candidate no longer be employed by the client within:

0-30 days = 100%

30-60 days = 75%

60-90 days = 50%

90-120 days = 25%

Up to 60 days the client will simply pay 25% of the fee. After 60 days the supplier is to refund the client based on the above scale within 7 days of the client requesting a refund.

10. LIABILITY

- 10.1 Subject to clause 10.2 below, neither party shall have any liability to the other under this Agreement in respect of any indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses).
- 10.2 Nothing in this Agreement shall limit or exclude either party's liability for fraudulent misrepresentation, death or personal injury as a result of its negligence, for breach of any obligations of confidentiality or for breach of the indemnities contained in clauses 4.3 and 12.2.
- 10.3 Neither party shall be in breach of this Agreement, nor liable for any failure or delay in performance of any obligations under this Agreement (and the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its or its subcontractors control including (without limitation) an act of God, legislation, war, terrorism, fire, flood, drought, failure of power supply, lock-out, strikes or other action in contemplation of the furtherance of a dispute (but not strikes or other action in contemplation of the furtherance of a dispute taken by the party's employees) interruption or failure of the general/public utility service, adverse weather conditions or loss in transport (but not loss of transport owned by, operated or under the control of the party) ("**Force Majeure Event**"). If the Force Majeure Event prevails for a continuous period of more than one (1) month, either party may terminate this Agreement by giving ten (10) working days' written notice to the other party. On the expiry of this notice period, this Agreement 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.

11. TERM AND TERMINATION

- 11.1 This Agreement shall take effect on the Commencement Date and shall continue in effect until terminated earlier by either the Company or the Client in accordance with this clause 11. Following the Initial Term, this Agreement may be renewed for additional periods of time as agreed to by the parties (each a "**Renewal Period**," and together with the Initial Term, the "**Term**"), provided that any such extension be formalized through a written amendment to this Agreement executed by the parties. If either party is of the position that it does not want to renew this Agreement, said party must notify the other party of its intent not to renew this Agreement at least sixty (60) calendar days prior to the expiration of the Initial Term or then applicable Renewal Period.
- 11.2 Either party may terminate this Agreement or any individual Contract at any time during the Initial Term by giving the other party not less than six (6) months' notice in writing.
- 11.3 Without affecting any other rights that it may be entitled to, either party may give immediate notice in writing terminating a Contract or (at its sole option) this Agreement if:

- 11.3.1 the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so; or
 - 11.3.2 the other party breaches any of the terms of this Agreement more than two (2) times in a six (6) month period in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or
 - 11.3.3 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
 - 11.3.4 a judicial manager, administrator or similar officer is appointed over all or any part of the assets or undertaking of the other party;
 - 11.3.5 the other party makes any arrangement for the benefit of its creditors or goes into liquidation or other form of receivership;
 - 11.3.6 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2.3 – 11.2.5; or
 - 11.3.7 The Company breaches any one or combination of the service levels set forth in the SLA (Appendix 1) more than three (3) times within a six (6) month period.
- 11.4 Termination of this Agreement for any reason shall not affect any rights or obligations accrued as of the date of termination and the continuation of any provision expressly stated to survive or implicitly surviving termination.
 - 11.5 Unless notified otherwise, upon termination of a particular Contract, said termination will not affect any other Contract in force as of the date of termination, but instead all such other Contracts will continue in full force and effect; provided, however, that if at any time Agreement is terminated, the effect of said termination will result in not only the termination of the Agreement, but also the termination and all Contracts in force as of the date of said termination.

12. INTELLECTUAL PROPERTY

- 12.1 The Intellectual Property of any work, documentation and other materials created or developed specifically by or for the Company on behalf of the Client including, without limitation, the Intellectual Property contained in any Deliverables in relation to this Agreement shall vest with the Client; provided, however, that any Intellectual Property rightfully vested in the Company prior to this Agreement will be notified to the Client and will remain the property of the Company and the Client shall be granted a royalty-free license for its use in conjunction with the Deliverables.
- 12.2 To the extent that any Intellectual Property created in the course of the Services vests in the Company, the Company assigns (by way of assignment of present and future rights) without payment all such Intellectual Property to the Client with full title guarantee. If the Company is unable to assign such Intellectual Property (because the laws in another country differ from English law and do not permit such assignment), the Company shall immediately on request execute all documents that

may be necessary to effect the transaction that most closely resembles the commercial intent of an assignment and is permitted in the relevant territory. Pending the above assignments and remaining formalities relating to such assignments, the Company shall hold all such Intellectual Property on trust for the Client.

- 12.3 The Client shall indemnify the Company in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Client as a result of or in connection with any claim that the Deliverables produced precisely to the Specifications infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other Intellectual Property rights of any other person.
- 12.4 The Company hereby irrevocably waives in favour of the Company the benefit of all moral rights or similar rights arising under the laws of any jurisdiction created in the course of the Services.
- 12.5 The Company shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

13. GOVERNANCE AND VARIATION

- 13.1 The Company and the Client representatives shall meet after the first three (3) months of signing this Agreement and thereafter at least once every six (6) months to discuss matters relating to the Services. Meetings can be by phone or face-to-face and the onus is with the Company to arrange these meetings.
- 13.2 Any breach by the Company relating to the terms of the Agreement for Services (or any other additional compliance terms which have been notified to the Company in the Specifications in accordance with clause 2.2) shall be a material breach of this Agreement. The Client reserves the right to conduct (from time to time) audits to check the Company's compliance with this Agreement and the various policies and code of conduct referred to herein; provided, however, that any such audit right must be notified to the Company at least five (5) working days in advance of its exercise.
- 13.3 During the Term of this Agreement and for a seven (7) year period thereafter, the Company shall maintain full, true and accurate accounts and records with regard to its activities under the Agreement, in particular for any amounts payable pursuant to the same. Upon five (5) days' notice, the Company shall provide to the Client all copies of its books, records, time sheets and other documentation relevant to the supply of the Services as requested by the Client or the Client's customer in order that it, at its expense, may audit the documentation and verify compliance by the Company with their obligations. If the audit demonstrates any invoices exceed the correctly chargeable amounts the Company must reimburse the Client for the overpaid sums and if the audit demonstrates any invoices exceed the correctly chargeable amounts the Company must reimburse the Client for the difference plus 25% to cover the audit cost, provided, however, that any overage or underage will

only be payable/reimbursable if discovered within twelve (12) months of the date of invoice.

- 13.4 No variation to this Agreement shall be bound or effective unless made in writing through a formal amendment signed by both parties.
- 13.5 If either party requests a change to the scope or execution of the Services, the Company shall, within a reasonable time, provide a written estimate to the Client of:
 - 13.5.1 the likely time required to implement the change;
 - 13.5.2 any necessary variations to the Company's charges arising from the change; and
 - 13.6.3 any other impact of the change on this Agreement.
- 13.6 If the Client wishes the Company to proceed with the change, the Company has no obligation to do so unless and until the parties have agreed to the necessary variations to its charges, the Services and any other relevant terms of this Agreement in a formal amendment signed by both parties.
- 13.7 The Company agrees to acknowledge in writing to the Client any approach by a customer of the Client in writing prior to any transactions taking place between the Company and any such customer.
- 13.8 The Company agrees to not approach any customer or employee of the Client during the Term of this Agreement and for a period of two (2) years following its termination or expiration; provided, however, should the Client default under this Agreement, voluntarily cease working with a customer or be subject to voluntary or involuntary liquidation or cease of business, the Company shall have the right to contact the customer or employee directly for continued and/or additional business endeavours. Any existing customers of the Company that may be duplicated should be notified by the Company to the Client immediately.

14. ENFORCEABILITY

- 14.1 No failure or delay by either the Company or the Client in exercising any of their rights or remedies provided under this Agreement or by law shall be deemed to be a waiver of those (or any other) rights or remedies nor shall it preclude or restrict any further exercise of such (or any other) rights or remedies. No waiver by any party of a breach of any provision of this Agreement shall be considered as a waiver of any subsequent breach of the same.
- 14.2 No single or partial exercise of any right or remedy provided under this Agreement or law shall preclude or restrict the further exercise of any such right or remedy.
- 14.3 A waiver (which may be given subject to conditions) of any right or remedy provided under this Agreement or by law shall only be effective if it is in writing and signed by both parties. Furthermore, any such signed waiver shall apply only to the party to whom it is addressed and only for the specific circumstances for which it is given, and it shall not prevent the party who has given the waiver from subsequently relying on the right or remedy in other circumstances.

- 14.4 A party that waives a right or remedy provided under this Agreement or by law in relation to another party or takes or fails to take any action against that party, does not affect its rights in relation to any other party.
- 14.5 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

15. ENTIRE AGREEMENT; SEVERANCE; ORDER OF PRECEDENCE

- 15.1 Each party on behalf of itself and (in the case of the Client, as agent for any of its Affiliates) acknowledges and agrees with the other party (the Client acting on behalf of itself and as agent for each of its Affiliates) that this Agreement together with any documents referred to in it constitute the entire agreement between the parties with respect of the matters dealt with herein and supersedes any previous arrangement, understanding or arrangement between them relating to the subject matter of this Agreement.
- 15.2 Each party on behalf of itself and (in the case of the Client, as agent for any of its Affiliates) acknowledges that, in entering into this Agreement and the documents referred to in it, it does not rely on any statement, representation, assurance or warranty (each a “**Representation**”) of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement or those documents. Each party agrees that the only remedies available to it arising out of or in connection with a Representation shall be for breach of contract.
- 15.3 Nothing in this Agreement shall limit or exclude either party’s liability for fraud.
- 15.4 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Agreement, and the validity and enforceability of the other provisions of the Agreement shall not be affected.
- 15.5 If a provision of this Agreement (or part of any provision) is found illegal, invalid or unenforceable, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.
- 15.6 Should there occur a conflict among the terms and conditions of this Agreement, the SLA, any Contract, any Specifications, any purchase order and/or any other additional requirements with respect to a particular order for Services, the order of precedence shall be as follows:
- | | |
|---------|-----------------------------------|
| First: | this Agreement |
| Second: | the SLA |
| Third: | the Contract |
| Fourth: | the Purchase Order |
| Fifth: | the Specifications |
| Sixth: | any other additional requirements |

In light of the foregoing, and unless the context requires otherwise, any reference to the “Agreement” throughout this Agreement shall be deemed to include the SLA, and all Contracts, purchase orders, Specifications and any other additional requirements agreed to by the parties.

16. JURISDICTION

16.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree to submit to the non-exclusive jurisdiction of the courts of England and Wales in respect of any dispute or difference arising under it.

17. ASSIGNMENT

17.1 The Client may not assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under this Agreement without the prior consent of the Company, which will not be unreasonably withheld, unless same it made to an Affiliate of Client.

17.2 The Company shall not, without the prior written consent of the Client (such consent not to be unreasonably withheld or delayed), assign, transfer, charge, mortgage, subcontract (save in respect of postal services for which subcontracting by the Client is permitted in accordance with the terms of this Agreement), declare a trust of or deal in any other manner with all or any of its rights or obligations under this Agreement. Where the Company does elect or is authorised to subcontract (as the case may be) its rights or obligations under the Agreement it shall remain fully liable for the acts or omissions of the subcontractors as if they were its own acts or omissions. For clarity, a subcontract will occur when the Company appoints a third party to carry out all or any part of the Services it is required to provide to the Client. The use of third parties to provide internal services to the Company or services for its own use (such as IT systems) is not a subcontract under this Agreement.

18. NO PARTNERSHIP OR AGENCY

18.1 Nothing in this Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise any party to act as agent for any other party, and no party shall have authority to act in the name or on behalf of or otherwise to bind any other party in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

19. RIGHTS OF THIRD PARTIES

19.1 Save for the Client’s Affiliates (who shall be entitled to enforce, and enjoy the benefit of, any provision of this Agreement) a person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any provision of this Agreement, provided, however, that this provision does not affect any right or remedy of a third party which exists or is available apart from that Act.

19.2 No variation, amendment, modification, suspension, cancellation or termination of this Agreement may be taken without the consent of any Affiliate that has become a

party to this Agreement through the execution of a Contract, provided said Contract is in effect at the time of the variation, amendment, modification, suspension cancellation or termination.

20. NOTICES

20.1 A notice given to a party under this Agreement shall be in writing and may be:

- (a) delivered personally; or
- (b) sent by commercial courier; or
- (c) sent by recorded delivery (or similar traceable postal service).

20.2 The addresses for service of a notice are as follows:

Central Mailing, Units 59 – 60 Gravelly Industrial Park, Erdington, Birmingham, B24 8TQ.

The Client: _____

20.3 If a notice has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows:

20.3.1 if delivered personally, at the time of delivery; or

20.3.2 if delivered by commercial courier, at the time of signature of the courier's receipt; or

20.3.4 if sent by recorded delivery, at 9.00 am on the second day after posting.

20.4 For purposes of this clause, if deemed receipt under this clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), the notice is deemed to have been received when business next starts in the place of receipt.

20.5 To prove delivery, it is sufficient to prove that if sent by pre-paid first-class post, the envelope containing the notice was properly addressed and posted.

20.6 The provisions of this clause 20 shall not apply to the service of any process in any legal action or proceedings.

20.7 A notice of termination required to be given under this Agreement shall not be validly served if sent by e-mail. Specifications, quotes and purchase orders can be issued by email.

21. DISPUTE RESOLUTION

21.1 If any dispute arises in connection with this Agreement, senior management of the Client and the Company shall, within fourteen (14) days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.

21.2 If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To

initiate the mediation, a party must give notice in writing (ADR notice) to the other party requesting a mediation. A copy of the request should be sent to CEDR Solve.

- 21.3 Commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

22. INSURANCE

- 22.1 Required Insurance Coverage. The Company will, at all times during the Term, obtain and maintain in force the following insurance coverages (in GBP Sterling or equivalent currency that covers the GBP Sterling amount) with insurers that have an A.M. Best rating of A- or better or an equivalent rating from a recognised insurance company rating agency. The Company will ensure that the insurance coverage or equivalent coverage is effective in all the countries that perform the Services:

- (a) Employer's Liability Insurance with a minimum limit of £5,000,000 per occurrence or the greater minimum limit as may be required by applicable law;
- (c) Commercial General Liability Insurance, including products, completed operations liability and blanket or broad form personal injury, contractual liability and broad form property damage liability coverage for damages to any property with a minimum combined single limit of £5,000,000 (or its local equivalent) per occurrence and £5,000,000 general aggregate per location for bodily injury, death, property damage and personal injury;
- (d) If automobiles are used in connection with the Services to be performed hereunder, Automobile/Motor Liability coverage for all owned, non-owned and hired vehicles with limits of not less than £2,000,000 combined single limit per occurrence;
- (e) Excess or Public Liability Insurance with a minimum limit of £5,000,000 coverage in excess of the insurance provided under the policy indicated in clause 15.1(c) above;
- (f) All Risk Property Insurance that includes Electronic Data Processing coverage on equipment, data, media and valuable papers, including extra expense coverage, with a minimum limit adequate to cover those risks on a replacement cost basis;
- (g) Employee Dishonesty and Computer Fraud coverage or equivalent for loss arising out of or in connection with any fraudulent or dishonest acts committed by the Service Provider, acting alone or in collusion with others, including the property and funds of others in their care, custody or control, in a minimum amount of £2,000,000; and
- (h) Errors and Omissions Liability Insurance or equivalent, including coverage for Network and Privacy Risks, and covering wrongful acts, errors and omissions of Service Provider in an amount of at least £2,000,000 per claim.
- (i) Professional Indemnity Limit of £1 Million is required

- 22.2 Certificates of Insurance. The foregoing insurance coverages will be primary and any other insurance or self-insurance that may be maintained by the Client shall be

excess and noncontributory. The Company will cause its insurers or its representatives to issue certificates of insurance evidencing that the coverages required under this Agreement are maintained in force prior to the Commencement Date and shall deliver renewal certificates upon written request. The Company shall name the Client, its representatives, and its Affiliates as additional insureds on the policies described in clause 22.1 or shall include the Client as an indemnitee to principal. The Company will provide at least 10 (10) days' written notice to the Client prior to any modification, cancellation or non-renewal of the policies described in clause 22.1.

- 22.3 Waiver of Subrogation Rights. The Company shall make all reasonable efforts to ensure that its insurers Workers' Compensation waive any rights of subrogation they may have against the Client arising in relation to the subject matter of this Agreement, where applicable.
- 22.4 Risk of Loss. Neither party represents or warrants that the coverages and limits listed herein are adequate to cover and protect the interests of the other party. The Company will be fully responsible for risk of loss of and damage to any building, equipment, software or other materials owned or leased by it and used in providing the Services.
- 22.5 Subcontractors. Where a Subcontractor is used by the Company, the Company shall require the Subcontractor to carry equal or similar coverage.

23. APPENDICES

- 23.1 The following appendices are attached to this Agreement, made to form a part hereof and are subject to its terms and conditions:

Appendix 1 SLA

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APPENDIX 1

SERVICE LEVEL AGREEMENT

Definitions

Normal Business Hours: Between 9:00am to 5:30pm

Working Days: The days of the week that constitute usual office working in the relevant country (e.g. UK – Monday to Friday inclusive; etc)

Non-Working Days: Local bank holidays and weekends

Service Levels

The following times are all within normal business hours and local supplier working days. If the SLA exceeds the normal business hours (after 5:30pm) then time stops until the following working day and then continues at 9:00am.

Simple and Complex pricing Request for Quotation (RFQ's) to be identified at the time of accepting the RFQ via the Client. Otherwise the Client assumes the Simple RFQ SLA.

DESCRIPTION	SLA	TARGET
All telephone call messages returned within	4 hrs	98%
All emails requiring a response to be acknowledged within	4 hrs	98%
RFQ's to be accepted or declined within	4 hrs	98%
Simple prices for accepted RFQ's to be returned within	1 working day	98%
Complex prices for accepted RFQ's to be returned within	2 working days	98%
Purchase Order (PO) acknowledgement within	4 hrs	98%
Work/Production plan to Client	2 working days	98%
Proofs to be returned to Client within	1 working days	98%
Job delivered on time	Same day	98%
Proof of Delivery (POD) to be received by Client after delivery to the destination.	1 working days	98%
Accurate Company conforming invoice to be submitted after final full delivery	15 working days	98%

Pursuant to Clause 6.4.3 the Service Credits will be mutually agreed on a job-by-job basis to resolve a fair and reasonable compensation for non-conformance.