

Terms and Conditions

DRPG Supply of Digital Support Services

1 Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

"Agency" DRP (UK) Limited (company number 03653794) whose registered office is situated at Unit 212 Ikon Industrial Estate, Droitwich Road, Hartlebury, Kidderminster, Worcestershire, DY10 4EU, or any member of the Agency's Group who will provide the Support Services to the Client.

"Agency Equipment" any equipment, including tools, systems, cabling or facilities, provided or made available by the Agency to the Client and used directly or indirectly in the supply of the Services, including any such items specified in a Support Package Proposal but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Client.

"Agreement" the agreement between the Agency and the Client for the supply of Support Services in accordance with these Conditions and the Support Package Proposal.

"Business Day" a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

"Charges" the charges payable by the Client for the supply of the Support Services in accordance with clause 5.

"Client" the person or firm who purchases Support Services from the Agency as set out in the Support Package Proposal.

"Client Default" has the meaning set out in clause 4.2.

"Cloud Hosting" the services provided by a cloud computing provider or facility to host data, services and/or solutions necessary to enable the Agency to provide the Support Services to the Client.

"Commencement Date" has the meaning given in clause 2.2.

"Conditions" these terms and conditions as amended from time to time in accordance with clause 13.5

"Control" has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

"Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures" as defined in the Data Protection Legislation.

"Data Protection Legislation" all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

"Domestic Law" the law of the United Kingdom or a part of the United Kingdom.

"Group" in relation to the Agency, the Agency, any subsidiary or holding company from time to time of the Agency, and any subsidiary from time to time of a holding company of the Agency.

"Initial Term" the initial term of this Agreement as set out in the Support Package Proposal.

"Intellectual Property Rights" patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Open Source Software" any software which is developed, tested, or improved through public collaboration and distributed with the idea that it must be shared with others, ensuring an open future collaboration licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition (<http://www.opensource.org/docs/definition.php>) or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at <http://www.gnu.org/licenses/gpl.html>) or anything similar, included or used in, or in the development of, the software, or with which the software is compiled or to which it is linked.

"Order" the Client's order for Support Services as set out in the Client's written acceptance of the Project Acceptance Form (such acceptance to be by signing and returning the Project Acceptance Form or by confirming via email that it is accepted).

Terms and Conditions

DRPG Supply of Digital Support Services

"Project Acceptance Form" the document issued by the Agency to the Client following the Client's acceptance of the Support Package Proposal.

"Support Package Proposal" the description or proposal of the Support Services as provided in writing by the Agency to the Client.

"Support Services" the Support Services supplied by the Agency to the Client as set out in the Support Package Proposal.

"Third-Party Fees" any fees, charges and costs payable to third parties relating to the provision of the Support Services and which are payable by the Client in accordance with clause 5.6.

"Third-Party Licences" any licences granted by third-party licensors in respect of any Intellectual Property Rights used by the Agency in connection with the provision of the Support Services together with all licences relating to any Open Source Software.

1.2 Interpretation:

- 1.2.1 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.2.2 Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.3 A reference to writing or written includes email.

2 Basis of Agreement

- 2.1 The Project Acceptance Form constitutes an offer by the Agency for the Client to purchase the Support Services in accordance with these Conditions.
- 2.2 The Project Acceptance Form shall be accepted when the Order is received by the Agency which point and on which date the Agreement shall come into existence ("**Commencement Date**").
- 2.3 The Agency shall provide the Support Services to the Client in accordance with the Agreement from the date set out in the Project Acceptance Form.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Agency, and any descriptions or illustrations contained in the Agency's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Support Services described in them. They shall not form part of the Agreement or have any contractual force.

- 2.5 These Conditions apply to the Agreement to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3 Supply of Support Services

- 3.1 The Agency shall supply the Support Services to the Client using reasonable care and skill.
- 3.2 The Agency shall use all reasonable endeavours to supply the Support Services to the Client in accordance with the Support Package Proposal in all material respects.
- 3.3 The Agency shall use all reasonable endeavours to meet any performance dates specified in the Support Package Proposal or in the Project Acceptance Form but any such dates shall be estimates only and time shall not be of the essence for performance of the Support Services.
- 3.4 The Agency reserves the right to amend the Support Package Proposal if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Support Services, and the Agency shall notify the Client in any such event.
- 3.5 The Agency shall appoint a support package manager to act as a single point of contact for the Client, as identified in the Support Package Proposal. That person shall have authority to contractually bind the Agency on all matters relating to the Support Services (including by signing Change Orders). The Agency may replace that person from time to time where reasonably necessary in the interests of the Agency's business.
- 3.6 The Agency shall undertake any updates, upgrades or replacement of Open Source Software which are necessary in order to enable the Agency to perform the Support Services.
- 3.7 Where the Support Services require Cloud Hosting, the Client acknowledges that the Charges are calculated on the basis of usage. Usage is determined by a number of factors which may include: number of users, duration of use, levels of integration, data storage requirements and volume of downloads. Any estimate given or Charges raised by the Agency in respect of Cloud Hosting is based upon the information given to the Agency by the Client in respect of its processing requirements. If, as a result of surges in estimated use (number of users etc.), the Agency incurs additional charges from the Cloud Hosting third-party supplier, the Agency shall be entitled to raise a further invoice in respect of these additional charges.

4 Client's obligations

- 4.1 The Client shall:

Terms and Conditions

DRPG Supply of Digital Support Services

- 4.1.1 co-operate with the Agency in all matters relating to the Support Services;
- 4.1.2 provide the Agency, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by the Agency;
- 4.1.3 provide the Agency with such information and materials as the Agency may reasonably require in order to supply the Support Services, and ensure that such information is complete and accurate in all material respects;
- 4.1.4 obtain and maintain all necessary licences, permissions and consents which may be required for the Support Services before the date on which the Support Services are to start; and
- 4.1.5 comply with any additional obligations as set out in the Support Package Proposal or as reasonably required by the Agency from time to time.
- 4.2 If the Agency's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation ("**Client Default**"):
 - 4.2.1 without limiting or affecting any other right or remedy available to it, the Agency shall have the right to suspend performance of the Support Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays the Agency's performance of any of its obligations;
 - 4.2.2 the Agency shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Agency's failure or delay to perform any of its obligations as set out in this clause 4.2; and
 - 4.2.3 the Client shall reimburse the Agency on written demand for any costs or losses sustained or incurred by the Agency arising directly or indirectly from the Client Default.
- 5 Charges and payment**
- 5.1 The Charges for the Support Services shall be calculated on the basis as set out in the Support Package Proposal with any additional time spent being at the daily rates set out in the Support Package Proposal and out of hours work being undertaken at the rates set out in the Support Package Proposal.
- 5.2 The Agency shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom the Agency engages in connection with the Support Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of
- Support Services provided by third parties and required by the Agency for the performance of the Support Services, and for the cost of any materials.
- 5.3 The Agency reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the prevailing rates in the Agency's industry in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date.
- 5.4 The Agency shall invoice the Client at the frequency set out in the Project Acceptance Form.
- 5.5 Unless otherwise agreed between the parties in writing, the Client shall pay each invoice submitted by the Agency within 30 days of the date of the invoice and in full and cleared funds to a bank account nominated in writing by the Agency, and time for payment shall be the essence of the Agreement.
- 5.6 In relation to Third-Party Fees:
 - 5.6.1 the Client shall reimburse the Agency for all Third-Party Fees which have been incurred by the Agency when performing the Support Services. Including such Third-Party Fees that have been incurred as a result of updates, upgrades or replacements to the Open Source Software;
 - 5.6.2 the Client acknowledges that the Third-Party Fees are subject to alteration from time to time and this is outside of the Agency's control. Any increase in the Third-Party Fees will be passed on to the Client and payable by the Client in accordance with this clause 5; and
 - 5.6.3 the Agency reserves the right to ask the Client either for a deposit towards any Third-Party Fees, or to pay for them in advance. Where the Client asks for such payments in advance to be invoiced, the Agency shall not be obliged to order or engage the third party until the payment in advance has been paid to the Agency in full.
- 5.7 All amounts payable by the Client under the Agreement are exclusive of amounts in respect of value added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Agreement by the Agency to the Client, the Client shall, on receipt of a valid VAT invoice from the Agency, pay to the Agency such additional amounts in respect of VAT as are chargeable on the supply of the Support Services at the same time as payment is due for the supply of the Support Services.
- 5.8 If the Client fails to make a payment due to the Agency under the Agreement by the due date, then, without limiting the Agency's remedies under clause 10, the Client shall pay interest on the overdue sum from the due date until payment of

Terms and Conditions

DRPG Supply of Digital Support Services

the overdue sum, whether before or after judgment. Interest under this clause 5.8 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

- 5.9 All amounts due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6 Change control

- 6.1 Either party may propose changes to the scope or execution of the Support Services but no proposed changes shall come into effect until a **Change Order** has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on the Support Services, the Charges, the timetable of the Support Services and/or any of the terms of this Agreement.
- 6.2 If the Agency wishes to make a change to the Support Services it shall provide a draft Change Order to the Client.
- 6.3 If the Client wishes to make a change to the Support Services:
- 6.3.1 it shall notify the Agency and provide as much detail as the Agency reasonably requires of the proposed changes, including the timing of the proposed changes; and
- 6.3.2 the Agency shall, as soon as reasonably practicable after receiving the information at clause 6.3.1 provide a draft Change Order to the Client.
- 6.4 If the parties:
- 6.4.1 agree to a Change Order, they shall sign it and that Change Order shall amend this Agreement; or
- 6.4.2 are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 12.
- 6.5 The Agency may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Client pursuant to Clause 6.3 on a time and materials basis at the Agency's daily rates specified in the Support Package Proposal.

7 Intellectual property rights

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Support Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by the Agency.

- 7.2 The Client grants the Agency a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to the Agency for the term of the Agreement for the purpose of providing the Support Services to the Client.

- 7.3 The Client shall comply with the terms of any Third-Party Licences and shall indemnify and hold the Agency harmless against any loss, claims, damage or expenses (including professional fees) that it may suffer or incur as a result of the Client's breach of the Third- Party Licence terms. A breach by the Client of a Third-party Licence will be treated as a breach of this Agreement.

8 Data protection

- 8.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 8.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Agency is the Processor.
- 8.3 Without prejudice to the generality of clause 8.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Agency and/or lawful collection of the Personal Data by the Agency on behalf of the Client for the duration and purposes of the Agreement.
- 8.4 Without prejudice to the generality of clause 8.1, the Agency shall, in relation to any Personal Data processed in connection with the performance by the Agency of its obligations under the Agreement:
- 8.4.1 process that Personal Data only on the documented written instructions of the Client unless the Agency is required by Domestic Law to otherwise process that Personal Data. Where the Agency is relying on Domestic Law as the basis for processing Personal Data, the Agency shall promptly notify the Client of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Agency from so notifying the Client;
- 8.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and

Terms and Conditions

DRPG Supply of Digital Support Services

encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

8.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

8.4.4 not transfer any Personal Data outside of the UK unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

- (a) the Client or the Agency has provided appropriate safeguards in relation to the transfer;
- (b) the Data Subject has enforceable rights and effective legal remedies;
- (c) the Agency complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (d) the Agency complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

8.4.5 assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

8.4.6 notify the Client without undue delay on becoming aware of a Personal Data Breach;

8.4.7 at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the Agreement unless required by Domestic Law to store the Personal Data; and

8.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 8.

8.5 The Client consents to the Agency appointing third-party processors of Personal Data under the Agreement. The Agency confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 8 and in either case which the Agency confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Client and the Agency, the Agency shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 8.5.

8.6 The Agency, at any time on not less than 30 days' notice, revise this clause 8 by replacing it with any applicable controller to processor standard clauses or similar terms adopted by the Information Commissioner or forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Agreement).

9 Limitation of liability

9.1 References to liability in this clause 8.1 include every kind of liability arising under or in connection with the Agreement including liability in Agreement, tort (including negligence), misrepresentation, restitution or otherwise.

9.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

9.3 Nothing in this clause 8.1 shall limit the Client's payment obligations under the Agreement.

9.4 Nothing in the Agreement limits any liability which cannot legally be limited, including but not limited to liability for death or personal injury caused by negligence, fraud or fraudulent misrepresentation, and any breach of the terms implied by section 2 of the Supply of Goods and Support Services Act 1982 (title and quiet possession).

9.5 Subject to clause 9.2 and clause 9.4, the Agency's total liability to the Client shall not exceed 100% of the total Charges in paid by the Client to the Agency in the twelve months preceding the event to which the liability arose.

9.6 Subject clause 9.2, clause 9.3 and clause 9.4, the following types of loss are wholly excluded: loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill, and indirect or consequential loss.

9.7 The Agency has given commitments as to compliance of the Support Services with relevant Support Package Proposals in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Support Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.

9.8 The Client shall comply with the Third-Party Licences and shall indemnify the Agency against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Agency arising out of or in connection with the Client's breach of the terms of any such Third-Party Licences.

9.9 Unless the Client notifies the Agency that it intends to make a claim in respect of an event within the

Terms and Conditions

DRPG Supply of Digital Support Services

notice period, the Agency shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire three months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

- 9.10 This clause 9 shall survive termination of the Agreement.

10 Term and Termination

- 10.1 This Agreement shall, unless otherwise terminated as provided in this clause 10, commence on the Commencement Date and shall continue for the Initial Term when it shall terminate automatically without notice, unless, no later than 30 days before the end of the Initial Term (or any Extended Term agreed under this clause), the parties agree in writing that the term of the agreement shall be extended for a further period as agreed by the parties in writing no later than 30 days before the end of the Initial Term (Extended Term). Unless it is further extended or terminated earlier in accordance with clause 10, the Agreement shall terminate automatically without notice at the end of an Extended Term.
- 10.2 If the Agreement is extended in accordance with clause 10.1, any time allocated by the Agency for performance of the Support Services in the Support Package Proposal during the Initial Term or any Extended Term shall not roll over to any subsequent Extended Term. The designated allocation of time for performance of the Support Services will reset at the beginning of each Extended Term.
- 10.3 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- 10.3.1 the other party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
- 10.3.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- 10.3.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

- 10.3.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.

- 10.4 Without affecting any other right or remedy available to it, the Agency may terminate the Agreement with immediate effect by giving written notice to the Client if:

- 10.4.1 the Client fails to pay any amount due under the Agreement on the due date for payment; or.

- 10.4.2 there is a change of control of the Client.

- 10.5 Without affecting any other right or remedy available to it, the Agency may suspend the supply of Support Services under the Agreement or any other Agreement between the Client and the Agency if:

- 10.5.1 the Client fails to pay any amount due under the Agreement on the due date for payment;

- 10.5.2 the Client becomes subject to any of the events listed in clause 10.3.3 or clause 10.3.4, or the Agency reasonably believes that the Client is about to become subject to any of them; and

- 10.5.3 the Agency reasonably believes that the Client is about to become subject to any of the events listed in clause 10.3.2.

11 Consequences of termination

- 11.1 On termination or expiry of the Agreement the Client shall immediately pay to the Agency all of the Agency's outstanding unpaid invoices and interest and, in respect of Support Services supplied but for which no invoice has been submitted, the Agency shall submit an invoice, which shall be payable by the Client immediately on receipt.

- 11.1.1 ; and

- 11.2 Following termination or expiry of the Agreement, in the event that any remediation works are required to any website hosted by the Agency on behalf of the Client, the Agency shall notify the Client that such remediation works are required and the cost of such remediation works (payable in accordance with clause 5) and the Client shall advise the Agency whether it wishes to:

- (a) proceed with such remediation works; or

- (b) terminate the hosting of the website.

- 11.3 If the Client's website is not hosted by the Agency, the Agency accepts no liability or responsibility for any vulnerabilities or remediation works required to

Terms and Conditions

DRPG Supply of Digital Support Services

the Client's website following the termination or expiry of the Agreement.

11.4 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

11.5 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.

12 Dispute Resolution Procedure

12.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it ("**Dispute**") then except as expressly provided in this Agreement the parties shall follow the procedure set out in this clause:

12.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, both the Agency's and the Client's directors responsible for the management of the Support Services shall attempt in good faith to resolve the Dispute. The director from the Agency shall, where appropriate, suggest a course of action in an attempt to rectify a dispute which shall form the basis of the parties' discussion;

12.1.2 if the Agency's and the Client's directors responsible for the management of the Support Services are for any reason unable to resolve the Dispute within 10 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR notice.

12.2 No party may commence any court proceedings under clause 13.11 in relation to the whole or part of the Dispute until 30 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

12.3 If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 30 days, or the mediation terminates before the expiration of the said period of 30 days, the Dispute shall be finally resolved by the courts of

England and Wales in accordance with clause 13.11.

13 General

13.1 **Force majeure:** Neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.

13.2 Assignment and other dealings:

13.2.1 The Agency may at any time assign, mortgage, charge, subcontractor, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement.

13.2.2 The Client shall not assign, transfer, mortgage, charge, subcontractor, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement without the prior written consent of the Agency.

13.3 Confidentiality:

13.3.1 Each party undertakes that it shall not at any time during the Agreement, and for a period of 5 years after termination or expiry of the Agreement, disclose to any person any confidential information concerning the business, affairs, clients, customers or suppliers of the other party, except as permitted by clause 13.3.2.

13.3.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, suppliers, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party shall ensure that its employees, officers, representatives, Agreement, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13.3; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Agreement.

13.4 Entire agreement:

13.4.1 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

13.4.2 Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no

Terms and Conditions

DRPG Supply of Digital Support Services

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

13.4.3 Nothing in this clause shall limit or exclude any liability for fraud.

13.5 **Variation:** Except as set out in these Conditions, no variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.6 **Waiver:** A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

13.7 **Severance:** If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement deleted under this clause 13.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.8 **Notices:**

13.8.1 Any notice given to a party under or in connection with the Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

13.8.2 Any notice shall be deemed to have been received if delivered by hand, at the time the notice is left at the proper address, or if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting

13.8.3 This clause 13.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

13.9 **Third party rights:**

13.9.1 Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

13.9.2 Any member of the Agency's Group shall have the right to enforce any term of this Agreement.

13.10 **Governing law.** The Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

13.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.

Terms and Conditions

DRPG Supply of Digital Support Services

Data Processing Particulars

Subject matter of processing: the provision of Support Services in accordance with the Agreement.

Duration of Processing: the Initial Term and any Extended Term.

Nature of Processing: the processing of personal data in order to provide the Support Services.

Personal Data Categories: name, email address and telephone number.

Data Subject Types: the Client's personnel.