



Terms and Conditions of Supply

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## 1. Interpretation

### 1.1. Definitions:

1.2. In these Conditions (as defined below) the following terms shall have the following meanings:

"Agreed Times"	shall have the meaning set out in clause 3.2;
"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 NPH for the supply of the Services in accordance with clause 5;
"Commencement Date"	has the meaning set out in clause 2.3;
"Conditions"	these terms and conditions as amended from time to time in accordance with clause 12.5;
"Contract"	the contract between the Provider and the Client for the provision of Services in accordance with these Conditions;
"Contract Period"	the period starting on the Commencement Date and ending on the End Date;
"Control"	shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly;
"Covid Testing"	testing for presence of the COVID-19 novel coronavirus or related antibodies that is carried out as part of the Services;
"Client"	the person or firm defined as such in the Order;
"Client Default"	has the meaning set out in clause 4.3;
"Deliverables"	any deliverables, including but not limited to, any certificates, documents, information, opinions or advice produced by the Provider for the Client;

"End Date"	the date described as such in the in the Order Confirmation;
"Facilities"	has the meaning set out in clause 4.1.3;
"Intellectual Property Rights"	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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;
"Order"	the Client's request for Services, which may be submitted via Practice Ignite;
"Order Confirmation"	the written confirmation issued by the Supplier confirming acceptance of the Order;
"Participant"	any member of the Client's staff that is to be the subject of a test or other procedure as part of the Services;
"Provider"	Newcastle Premier Health Limited;
"Provider Materials"	has the meaning set out in clause 4.1.7;
"Sample"	a saliva sample, swab sample, blood sample, or other sample taken from a Participant;
"Services"	the services, including the Deliverables and equipment, supplied by the Provider to the Client as set out in the Specification; and

"Specification" the description or specification of the Services provided by the Provider, as amended or supplemented, by the Provider in accordance with these Conditions or by way of notice to the Client from time to time;

## 1.3.

1.3.1. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.3.2. Any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.3.3. A reference to writing or written includes email but not fax.

## 2. **Basis of Contract**

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

2.2. In the event that there is a conflict between the Order Confirmation and the Terms and Conditions of Supply, the Terms and Conditions of Supply shall take precedence.

2.3. The Order shall only be deemed to be accepted when the Provider issues the Order Confirmation on which date the Contract shall come into existence (the "**Commencement Date**").

## 3. **Supply of Services**

3.1. The Provider shall supply the Services to the Client in accordance with the Specification in all material respects.

3.2. The Provider will use all reasonable endeavours to perform the Services at such times as maybe set out in the Order Confirmation, or such other times as it may agree, ("**Agreed Times**") but time shall not be of the essence of performance of the Services.

3.3. The Provider shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Provider shall notify the Client in any such event.

- 3.4. The Provider warrants to the Client that the Services will be provided using reasonable care and skill.
- 3.5. The Provider may notify the Client from time to time of any further support or services which it can offer and which it feels may be of benefit to the Client.
- 3.6. The Provider shall use its reasonable endeavours to meet any key performance indicators ("KPIs"), if any, explicitly set out in the Order Confirmation only, in relation to the Services to which the KPIs relate.

## 4. Client's Obligations

- 4.1. The Client shall:
  - 4.1.1. ensure that the terms of the Order and Order Confirmation and any information it provides in the Specification are complete and accurate;
  - 4.1.2. co-operate with the Provider in all matters relating to the Services;
  - 4.1.3. provide the Provider, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by the Provider (together the "**Facilities**");
  - 4.1.4. provide the Provider with such information and materials as the Provider may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
  - 4.1.5. prepare the Client's premises for the supply of the Services;
  - 4.1.6. obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
  - 4.1.7. if applicable; keep and maintain all materials, equipment, documents and other property of the Provider (the "**Provider Materials**") at the Client's premises in safe custody at its own risk, maintain the Provider Materials in good condition until returned to the Provider, and not dispose of or use the Provider Materials other than in accordance with the Provider's written instructions or authorisation;
  - 4.1.8. comply with any additional obligations as set out in the Specification or in any policies, procedures or protocols as notified to the Client from time to time; and

4.1.9. ensure that where the Services are to be provided at a location other than the Provider's premises:

4.1.9.1. the Client provides the Provider with all necessary electrical connections, lighting and heating and a private space of sufficient size to enable the Services to be provided on a confidential basis, if required by the Provider, and cooperates with the Provider and gives to, or procures for the Provider all necessary access to the relevant premises;

4.1.9.2. the Provider is provided with a broadband internet connection (Wi-Fi or by Ethernet cable) of sufficient bandwidth to enable the Provider to access the internet and to upload and download data via a laptop using the Provider's system within the time allotted for the provision of the Services;

and any change in location to that set out in the Order Confirmation must be notified to the Provider as soon as possible and the Provider reserves the right, without liability, to alter the date or time for the provision of the Services or to require an alternative location to be found in such circumstances if it is not practicable for the Provider to provide the Services at the new location;

4.1.10. in accordance with all policies or procedures from time to time notified by the Provider to the Client, inform all Participants of:

4.1.10.1. any possible pain, discomfort, distress, and/or any possible adverse allergic or other reaction or other risks inherent in any test or other procedure to which they will be subjected;

4.1.10.2. the possible inaccuracy of any test results that might be provided,

4.1.11. in accordance with all policies or procedures from time to time notified by the Provider to the Client, obtain all necessary information and consents from the Participants the before the date on which the relevant test or procedure is to be carried out and on request provide a copy to the Provider.

4.2. Where any materials or equipment used by the Provider in the provision of the Services ("**Equipment**") are stored by the Client, held by the Client for safekeeping, or otherwise in the possession or control of the Client for any period of time, then the Client:

- 4.2.1. shall be responsible for loss of, or damage to, such Equipment and in the event that such Equipment is lost or damaged, shall on demand reimburse the Provider the full cost of repair or replacement thereof;
  - 4.2.2. shall not part with possession of the Equipment;
  - 4.2.3. shall allow the Provider, its officers, employees and representatives access at any reasonable time by prior agreement to the premises at which the Equipment is stored in order to take possession of the same.
- 4.3. If the Provider's performance of any of its obligations is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (a "**Client Default**"):
- 4.3.1. the Provider shall without limiting its other rights or remedies have the right to suspend performance of the 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 to the extent the Client Default prevents or delays the Provider's performance of any of its obligations;
  - 4.3.2. the Provider shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Provider's failure or delay to perform any of its obligations as set out in this clause 4.3.
5. **Charges and Payment**
- 5.1. The Charges for the Services shall be as follows:
- 5.1.1. during the Contract Period, the Charges shall be as set out in the Order Confirmation;
  - 5.1.2. after the end of the Contract Period, then unless the Provider shall otherwise agree in writing, the Charges shall be the Providers standard charges from time to time in force
- 5.2. Where the Charges are calculated by reference to the number of units of a particular Service supplied, then the amount due shall be calculated by multiplying the applicable price per unit by the number of units supplied, subject always to clause 5.3.
- 5.3. Where the Charges set out in the Order Confirmation are stated to be subject to a minimum charge (the "**Minimum Charge(s)**") the Client hereby acknowledges and agrees to pay to the Provider the Minimum Charges in respect of those Services, irrespective of the number of units of such Services supplied.

- 5.4. The units used to calculate the Charges apply during the Provider's standard hours of 0800 to 1800 on Business Days. The Provider shall be entitled to charge an overtime rate of 150 per cent of the standard unit rate in respect of any part of the Services that are provided outside the hours of 0800 to 1800 on Business Days.
- 5.5. The Provider shall with prior agreement with the Client, be entitled to charge the Client for any expenses reasonably incurred by the individuals whom the Provider engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Provider for the performance of the Services, and for the cost of any materials.
- 5.6. The Provider shall invoice the Client on completion of the Services (if this occurs within a month of the Commencement Date) or monthly in arrears, unless stated otherwise in the Order Confirmation.
- 5.7. Where the Charges are calculated by reference to units of time spent by a member of the Provider's personnel in the provision of the Services, the Order Confirmation may specify a minimum charging unit for their time (for example, four hours) ("**Minimum Charging Unit**"). If a member of the Supplier's personnel is engaged in the provision of the Services for a continuous period of less than the Minimum Charging Unit, the Provider may still charge the Client an amount calculated by reference to the Minimum Charging Unit.
- 5.8. The Provider may from time to time agree to discount its charges to reflect an expectation that the Client will purchase a minimum volume of Services over a given period of time ("**Minimum Volume Commitment**"). The Minimum Volume Commitment will be recorded in the Order Confirmation, or otherwise notified in writing by the Provider to the Client. If the volume of Services purchased by the Client in any relevant period falls short of the Minimum Volume Commitment, the Provider may require the Customer at its discretion:
  - 5.8.1. to pay the difference between the Provider's standard charge and the discounted rate for the relevant Services that were purchased in the relevant period; and/or
  - 5.8.2. notify the Client that the Charges will be increased to a rate not exceeding the Provider's standard charge for the Services in question (such increase to take effect as from a date to be notified by the Provider).
- 5.9. The Client shall pay each invoice submitted by the Provider:
  - 5.9.1. within 30 days of the date of the invoice; and



- 5.9.2. in full and in cleared funds to a bank account nominated in writing by the Provider.
- 5.10. All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Provider to the Client, the Client shall, on receipt of a valid VAT invoice from the Provider, pay to the Provider such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.11. If the Client fails to make any payment due to the Provider under the Contract by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 4% per cent per annum above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.
- 5.12. The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Provider may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Provider to the Client.
- 5.13. Due to unforeseen circumstances or operational issues, the Provider may from time to time be unable to perform the Services in accordance with the Agreed Times. The Provider may cancel and then request the re-arrangement of any of the Agreed Times and will endeavour to provide as much notice of such cancellation as is reasonably possible in the circumstances. This clause 5.13 is without prejudice to the provisions of clauses 3.2.
- 5.14. If the Client wishes to cancel any appointment made for performance of any of the Services, the Client shall be liable to pay a cancellation fee in accordance with the table below, dependent up on the number of clear days' notice given prior to the relevant appointment. For these purposes, "clear days' notice" shall not include the day on which the notice of cancellation is received, or the day of the appointment, and any notice must be given in writing:

Number of clear days' notice	Cancellation Fee (as a percentage of the Charges for the Service in question)
7 or more	Nil
4 to 6 (inclusive)	75%
2 to 3 (inclusive)	50%
1	100%

## 6. Intellectual Property Rights

- 6.1. All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Provider.
- 6.2. The Client acknowledges that, in respect of any third-party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on the Provider obtaining a written licence from the relevant licensor on such terms as will entitle the Provider to license such rights to the Client.
- 6.3. All Provider Materials are the exclusive property of the Provider.

## 7. Data Protection

- 7.1. All Provider Materials are the exclusive property of the Provider.

**Data Controller:** has the meaning set out in section 1(1) of the Data Protection Act 1998 ("DPA");

**Data Subject:** an individual who is the subject of Personal Data;

**Personal Data:** has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, of which either party processes from time to time in relation to the Services or the Data Subjects who may receive or are the subject of all or any part of the Services provided under this Agreement;

**Data Protection Requirements:** the DPA, the Data Protection Directive (95/46/EC) and the General Data Protection Regulation ((EU) 2016/679) ("GDPR"), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and sensitive personal data and privacy from time to time, and the equivalent of any of the foregoing in any relevant jurisdiction (whether mandatory or not);

**Processing and process:** have the meaning set out in section 1(1) of the DPA; and

**Sensitive Personal Data:** has the meaning set out in the DPA.

7.2. The Client undertakes that all of its employees, contractors or agents who receive, or are the subject of any or all of the Services from the Provider have in principle agreed to be assessed by the Provider; consent will be obtained from the employee at the point of contact with the Provider, giving explicit written consent to the processing of any Sensitive Personal Data relating to them, including, as appropriate:

7.2.1. information about the individual's physical or mental health or condition in order to monitor sick leave and take decisions as to the individual's fitness for work; and

7.2.2. in order to comply with the Client's legal requirements and obligations to third parties.

7.3. The Client and Provider warrants that:

7.3.1. both parties will process Personal Data and Sensitive Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments; and

- 7.3.2. both parties will take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and/or Sensitive Personal Data and against the accidental loss or destruction of, or damage to, Personal Data and/or Sensitive Personal Data to ensure the Client's compliance with the seventh data protection principle.
  - 7.4. The Client and Provider mutually agree to their Undertakings under the Data Protection Act 2018.
  - 7.5. The Provider reserves the right to terminate (without any liability whatever) any or all of the Services in the event that such Services require the processing of Personal Data or Sensitive Personal Data, in circumstances where the individual in question has not, will not, or revokes their explicit, informed, and freely-given consent in writing to the Provider to enable it to process their Personal Data and/or Sensitive Personal Data such that the Provider cannot (or will not be able to, as the case may be) provide the Services (or any part of them) in accordance with the terms of the Contract.
  - 7.6. The Provider shall process the Personal Data and Sensitive Personal Data only to the extent, and in such a manner, as is necessary for the purposes of the Contract and shall not process the Personal Data and/or Sensitive Personal Data for any other purpose.
  - 7.7. The Provider will promptly and securely destroy any and all Personal Data and/or Sensitive Personal Data which is no longer relevant for the purposes of the Services promptly following termination or expiry of the Contract.
  - 7.8. Notwithstanding any other provision of these Conditions, the Client acknowledges that the Provider is entitled to maintain the confidentiality of all medical records and information that it may collect, create or otherwise obtain in relation to any officer or employee of the Client (or any person who is otherwise the subject of the Services), and all information relating to the medical reasons for any recommendation, certification, opinion or other matter given by the Provider pursuant to Services shall likewise be treated as confidential by the Provider, and the Client shall not therefore be entitled a copy or any other details of any of such records or information (in whole or part), and such records and information shall not form part of the Deliverables.
- 8. Limitation of Liability**
- 8.1. Nothing in these Conditions shall limit or exclude the Provider's liability for:
    - 8.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
    - 8.1.2. fraud or fraudulent misrepresentation;

- 8.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
  - 8.1.4. defective products under the Consumer Protection Act 1987;
  - 8.1.5. or any other liability which cannot be limited or excluded by applicable law.
- 8.2. Subject to clause 8.1, the Provider shall not be liable to the Client, and the Client shall not be liable to the Provider, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 8.2.1. loss of profits;
  - 8.2.2. loss of sales or business;
  - 8.2.3. loss of agreements or contracts;
  - 8.2.4. loss of anticipated savings;
  - 8.2.5. loss of use or corruption of software, data or information;
  - 8.2.6. loss of damage to goodwill; and
  - 8.2.7. any indirect or consequential loss.
- 8.3. Subject to clause 8.1, the Provider's total liability to the Client, and the Client's liability to the provider, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to 100% of the total Charges paid under the Contract.
- 8.4. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.5. This clause shall survive termination of the Contract.
- 9. Covid-19 Testing Services**
- 9.1. Where the Services include Covid Testing, the collection of Samples may be carried out:
- 9.1.1. by appropriately trained medical personnel who are employed by the Provider or by an agency contracted by the Provider to supply such personnel;

9.1.2. by the Client's staff, following training provided by the Provider if and to the extent they were not already trained to do so,

and the Order Confirmation will set out which alternative has been agreed.

9.2. Where clause 9.1.2 applies, the Provider shall at all times have the discretion to determine that the Client's staff should not proceed with the collection of Samples. The Provider might exercise this discretion where (by way of examples only, and without limitation) the Client is unable to provide evidence satisfactory to the Provider of the competence of its staff to collect the Samples, or of appropriate CQC registration. Should the Provider exercise this discretion, it shall have no liability to the Client for failure to provide any part of the Services, and the Client shall pay the Charges for all Services provided to date.

9.3. Where clause 9.1.2 applies the Client shall:

9.3.1. be responsible for ensuring that the collection of Samples is properly carried out in accordance with the procedures and protocols described in the training given by the Provider;

9.3.2. provide the relevant Samples to the Provider properly marked with all necessary identification information as directed or requested by the Provider and shall ensure that such information is complete and accurate;

9.3.3. if necessary, store and transport the Samples to the Provider in accordance with procedures and protocols described in the training given by the Provider; and

9.3.4. manage the safe disposal of clinical waste in accordance with all applicable law and any policies or procedures notified to it by the Provider,

and the Client acknowledges that the accuracy of Covid Testing is dependent upon the Client carrying out its obligations under this clauses 9.3.1 to 9.3.3 .

9.4. The Client acknowledges that the accuracy of Covid Testing depends on many factors outside of the Provider's control and that testing can produce false results (including a false positive or a false negative result). Provided that the Provider has complied with the warranty in clause 3.4, the Provider is not liable in any way for any inaccurate test results produced. The Client and the Participants rely on the results of Covid Testing entirely at their own risk.

- 9.5. Other than the warranty provided in clause 3.4, the Provider does not provide any other representations, warranties or guarantees whatsoever in relation to any Covid Testing.
- 9.6. The Client shall indemnify the Provider against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Provider arising out of or in connection with any third party claims made against the Provider arising out of or in connection with:
  - 9.6.1. the Client's failure to carry out its obligations under clauses 4.1.11 and 9.3; and
  - 9.6.2. any pain, discomfort, distress, adverse allergic or other reaction as a result of the collection of Samples experienced by a Participant provided that where the collection of Samples is carried out by the Provider, that it is performed with reasonable care and skill.

## 10. Termination

- 10.1. Without limiting its other rights or remedies, the Provider may terminate the Contract, at any time for convenience by giving the Client not less than 5 Business Days' notice.
- 10.2. Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
  - 10.2.1. the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 (thirty) days of that party being notified in writing to do so;
  - 10.2.2. 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), 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;
  - 10.2.3. 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

- 10.2.4. 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 Contract has been placed in jeopardy.
- 10.3. Without limiting its other rights or remedies, the Provider may terminate the Contract with immediate effect by giving written notice to the Client if:
  - 10.3.1. the Client fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 3 (three) days after being notified to make such payment; or
  - 10.3.2. there is a change of Control of the Client.
- 10.4. Without limiting its other rights or remedies, the Provider may suspend provision of the Services under the Contract or any other contract between the Client and the Provider if the Client becomes subject to any of the events listed in clause 10.2.2 to 10.2.4 or the Provider reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.

## 11. Consequences of Termination

- 11.1. On termination of the Contract for any reason:
  - 11.1.1. the Provider may forthwith cease the performance of the Services;
  - 11.1.2. the Client shall immediately pay to the Provider all the Provider's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Provider shall submit an invoice, which shall be payable by the Client within 30 days after receipt of invoice;
  - 11.1.3. the Client shall return all of the Provider Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then the Provider may request in writing and give reasonable notice (30 days) to take possession of them on an agreed date and time. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - 11.1.4. the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of these Conditions which existed at or before the date of termination or expiry; and



- 11.1.5. clauses which expressly or by implication survive termination shall continue in full force and effect.

## 12. General

### 12.1. Force Majeure

- 12.1.1. Neither party shall be in breach of these Conditions nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (which shall include for the avoidance of doubt, pandemic).

### 12.2. Assignment & Other Dealings

- 12.2.1. The Provider may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 12.2.2. The Client shall not, without the prior written consent of the Provider, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

### 12.3. Confidentiality

- 12.3.1. Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or Providers of the other party, except as permitted by clause 12.3.2.
- 12.3.2. Each party may disclose the other party's confidential information:
  - 12.3.2.1. to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.3; and
  - 12.3.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

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

## 12.4. Entire Agreement

12.4.1. This 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.

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

## 12.5. Variation

12.5.1. No variation of the Contract or these Conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## 12.6. Waiver

12.6.1. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

12.6.1.1. waive that or any other right or remedy; or

12.6.1.2. prevent or restrict the further exercise of that or any other right or remedy

## 12.7. Severance

12.7.1. If any provision or part-provision of the Contract or these Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract and these Conditions.

## 12.8. Notices

- 12.8.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next Business Day delivery service, commercial courier or email.
- 12.8.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.8.1; if sent by pre-paid first class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- 12.8.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## 12.9. Third Parties

- 12.9.1. No one other than a party to the Contract shall have any right to enforce any of its terms.

## 12.10. Governing Law

- 12.10.1. This 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.

## 12.11. Jurisdiction

- 12.11.1. 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 this agreement or its subject matter or formation.