

**EDSENTIAL COMMUNITY INTEREST COMPANY
STANDARD CONDITIONS OF CONTRACT FOR THE
SUPPLY OF SERVICES AND GOODS**

1. DEFINITIONS and INTERPRETATION.

1.1 The following definitions and rules of interpretation shall apply.

The definitions detailed in the Contract Particulars (as defined below) shall have the same meaning as those given in the Contract Particulars unless indicated otherwise below.

“**Agreement**” means, together, the Contract Particulars and these terms and conditions.

“**Authorised Representative**” means Edsential's authorised representative as detailed in the Contract Particulars, or such person or persons as notified by Edsential to the Customer from time to time in writing, and being a person who can make decisions under this Agreement without the need for the matter to be escalated further.

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

“**Commencement Date**” means the date specified in the Contract Particulars.

“**Contract Particulars**” means the official order in the form attached as Appendix 1 to these terms and conditions and setting out details of the Customer's requirements, and to be signed by each of the Customer and Edsential.

“**Customer**” means the Customer as detailed in the Contract Particulars.

“**Customer's Equipment**” means any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services and/or Goods.

“**Customer's Manager**” means the Customer's authorised representative as detailed in the Contract Particulars, or such person or persons as notified by the Customer to Edsential from time to time in writing, and being a person who can make decisions under this Agreement without the need for the matter to be escalated further.

“**Deliverables**” means all documents, products and materials developed by Edsential or its agents, subcontractors, consultants and employees in relation to the Services and/or Goods.

“**Edsential**” means Edsential Community Interest Company (company number 09550258) and with its registered office at Whitby Hall Lodge, Stanney Lane, Ellesmere Port, CH65 6QY.

“**Edsential's Equipment**” means any equipment, including tools, systems, cabling or facilities, provided by Edsential or its subcontractors and used directly or indirectly in the supply of the Services and/or Goods which are not the subject of a separate agreement between the parties under which title passes to the Customer.

“**Goods**” means the goods to be supplied by Edsential to the Customer and as detailed in the Contract Particulars.

“**Initial Term**” means 12 months from the Commencement Date.

“**In-put Material**” means all documents, information and materials provided by the Customer relating to the Services and/or Goods, including computer programs, data, reports and specifications).

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

“**Pre-existing Materials**” means documents, information and materials provided by Edsential relating to the Services and/or Goods which existed prior to the commencement of this Agreement.

“**Price**” means the amount detailed in the Contract Particulars.

“**Price Review**” means a review of the Price payable under the contract to reflect, inter alia, material increases or decreases in the cost of raw materials and increases in the Consumer Prices Index.

“**Price Review Date**” means the date or dates specified for Price Review in the Contract Particulars or if none is specified the anniversary of the Commencement Date.

“**Services**” means the services to be provided by Edsential to the Customer and as detailed in the Contract Particulars together with any other services which Edsential provides to the Customer

“**TUPE**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 S1 2006, 46.

“**VAT**” means value added tax chargeable under the Value Added Tax Act 1994.

1.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.3 An obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. THE CONTRACT AND CONTRACT PERIOD

2.1 The terms and conditions of this Agreement govern the contract between Edsential and the Customer. No other conditions will apply. Edsential's delivery of Goods and/or the supply of Services shall imply that the Customer has accepted Edsential's offer and the terms of this Agreement.

2.2 This Agreement shall take effect on the Commencement Date and shall continue unless it is otherwise terminated in accordance with the remaining terms of this Agreement.

3. THE PRICE, PAYMENT AND PRICE REVIEW

3.1. The Price of the Goods and/or Services is as detailed in the Contract Particulars. The Customer will pay any VAT due.

- 3.2. No variation in Price will apply unless agreed in writing by the Authorised Representative prior to delivery of Goods or Services.
- 3.3. Edsential shall conduct a Price Review on or around each Price Review Date. Edsential may, by giving no less than one (1) month's written notice to the Customer, and following any Price Review, vary the Price in line with (a) the material increase or decrease in the cost of raw materials and/or (b) the percentage increase or decrease in the Consumer Prices Index in the preceding six (6) month period.
- 3.4. Payment for Goods received or Services completed will be made within 7 days of the date of Edsential's invoice therefor. Time for payment shall be of the essence.
- 3.5. The Customer will pay by BACS to the account details detailed on the Contract Particulars.
- 3.6. Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Edsential on the due date:
- 3.5.1 the Customer shall pay interest on the overdue amount at the rate of 4% per annum above National Westminster 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 Customer shall pay the interest together with the overdue amount; and
- 3.5.2 Edsential may suspend all Services, and/or the supply of Goods, until payment has been made in full.
- 3.7. All sums payable to Edsential under this Agreement shall become due immediately on its termination, despite any other provision and are payable in full without any deduction or set off. This clause 3.7 is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.

4. QUALITY OF GOODS AND SERVICES AND EDSENTIAL'S OBLIGATIONS

- 4.1. Edsential will use all reasonable endeavours to:
- 4.1.1. ensure that the Goods are fit for the purpose made known to Edsential by the Customer;
- 4.1.2. ensure that the Goods are of satisfactory quality;
- 4.1.3. ensure that the Goods conform to all relevant British and European standards and/or legislation;
- 4.1.4. ensure that the Goods and/or Services are (as applicable) delivered to the Customer and performed by Edsential in accordance with the timeframes detailed in the Contract Particulars, but the timeframes specified are estimates only, and time for delivery and/or performance shall not be of the essence of this Agreement;
- 4.1.5. ensure that the Services are performed with due skill, care and diligence expected of a professional body experienced in carrying out services of the kind envisaged;
- 4.1.6. ensure that the Goods and Services are supplied by supervised, experienced, qualified, trained and competent staff, and with the necessary staffing resources being made available by Edsential;
- 4.1.7. procure that any Edsential employees shall not, in connection with this Agreement commit an offence under the Bribery Act 2010.

5 CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall:
- 5.1.1 co-operate with Edsential in all matters relating to the provision of Services and/or Goods;
- 5.1.2 appoint the Customer's Manager in relation to the Services and Goods, who shall have the authority contractually to bind the Customer on matters relating to the Services and Goods;
- 5.1.3 grant Edsential, its agents, subcontractors, consultants and employees (Edsential Personnel), in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities required by Edsential or any Edsential Personnel;

- 5.1.4 provide, in a timely manner, such In-put Material and other information as Edsential may require, and ensure that it is accurate in all material respects;
- 5.1.5 inform Edsential in good time before commencement of the Services of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;
- 5.1.6 ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant United Kingdom standards or requirements;
- 5.1.7 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services and/or Goods, the installation of Edsential's Equipment, the use of In-put Material and the use of the Customer's Equipment in relation to Edsential's Equipment, in all cases before the date on which the Services are to start;
- 5.1.8 keep and maintain Edsential's Equipment in accordance with Edsential's instructions as notified in writing from time to time and shall not dispose of or use Edsential's Equipment other than in accordance with Edsential's written instructions or authorisation and ensure that Edsential's Equipment is maintained in good condition and insured for its full replacement value.
- 5.1.9 Maintain at all times insurance cover against all material risks including against death of any person or loss or damage to any personal property for an indemnity of not less than £10,000,000 per each claim and not do or permit to be done anything that may render any such policy to be void or voidable.
- 5.2 If Edsential's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, Edsential shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay and the Customer shall indemnify Edsential and hold Edsential harmless against all costs, losses, damages, liabilities and expenses howsoever arising and incurred by Edsential (to the Customer or any third party) as a result of any breach of the terms of the Agreement by the Customer..
- 5.3 The Customer shall be liable to pay to Edsential, on demand, all reasonable costs, charges or losses sustained or incurred by Edsential (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this Agreement and upon Edsential confirming such costs, charges and losses to the Customer in writing.
- 5.4 The Customer shall not, without the prior written consent of Edsential, at any time from the date of this Agreement to the expiry of 6 months after the completion of the Services or termination of this Agreement (whichever occurs later), solicit or entice away from Edsential or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of Edsential in the provision of the Services.
- 5.5 Any consent given by Edsential in accordance with clause 5.4 shall be subject to the Customer paying to Edsential a sum equivalent to 25% of the then current annual remuneration of Edsential's employee, consultant or subcontractor or, if higher, 25% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

6 CHANGE REQUEST

- 6.1 If either party wishes to change the scope or execution of the Services and/or provision of Goods, it shall submit details of the requested change to the other party in writing (**Change Request**).
- 6.2 If Edsential originates a Change Request, it shall provide, with the Change Request, written details of the impact which the proposed change will have on:
- 6.2.1 the Services and/or Goods;
 - 6.2.2 Edsential's existing charges;
 - 6.2.3 the timetable for the delivery of the Services and/or Goods; and
 - 6.2.4 any of the terms of this Agreement.
- 6.3 Edsential may, from time to time and without notice, change the Services and/or Goods in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services and/or Goods.
- 6.4 If the Customer originates a Change Request, Edsential shall, as soon as reasonably practicable after receiving the Change Request, provide a written estimate to the Customer setting out:
- 6.4.1 the likely time required to implement the proposed change;
 - 6.4.2 details of the impact which the proposed change will have on:
 - 6.4.3 the Services and/or Goods;
 - 6.4.4 Edsential's existing charges;
 - 6.4.5 the timetable for the delivery of the Services and/or Goods; and
 - 6.4.6 any of the terms of this Agreement.
- 6.5 Unless both parties consent to a Change Request, there shall be no change to the delivery of the Services and/or Goods and any other terms of this Agreement.
- 6.6 If both parties consent to a Change Request, it shall be signed by the each of the Authorised Representative and the Contract Manager, upon which the Change Request becomes a **Change Order**.
- 6.7 If either party is unwilling to accept a Change Request suggested by the other (or a term of any proposed Change Order), then the other party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 13.

7 INTELLECTUAL PROPERTY RIGHTS

- 7.1 As between the Customer and Edsential, all Intellectual Property Rights and all other rights in the Deliverables shall be owned by Edsential. Subject to clause 7.2, Edsential licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services and/or Goods. If this Agreement expires or is terminated in accordance with its terms this licence will automatically terminate.
- 7.2 The Customer acknowledges that, where Edsential does not own any of the Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on Edsential obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle Edsential to license such rights to the Customer.
- 7.3 The Customer licenses Edsential to use free of charge the Input Material and shall indemnify Edsential and hold it harmless against all losses, claims, costs, expenses, damages and liabilities incurred by Edsential in the event Edsential is not entitled to use the Input Material for any reason (including where a third party claims to be entitled to the Intellectual Property Rights in the Input Material).

8 LIMITATION OF LIABILITY

- 8.1 Nothing in this Agreement shall limit or exclude Edsential's liability for:
- 8.1.1 death or personal injury caused by its negligence;
 - 8.1.2 fraud or fraudulent misrepresentation; or
 - 8.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 8.2 Subject to clause 8.1, Edsential shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement 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 or damage to goodwill;
 - 8.2.6 loss of use or corruption of software, data or information;
- and
- 8.2.7 any indirect or consequential loss.
- 8.3 Subject to clause 8.1 Edsential's total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to an amount equal to the amount paid in respect of the Goods and /or Services supplied under the terms of this Agreement in the twelve month period immediately preceding the date of claim.

9 FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS AND CONFIDENTIALITY

- 9.1 The Customer acknowledges that Edsential is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. The Customer must assist and co-operate with Edsential to enable Edsential to comply with these information disclosure requirements.
- 9.2 The Customer undertakes that it shall not at any time during this Agreement and for a period of 5 years thereafter disclose to any person technical or commercial know how, specification, invention, processes or initiatives which are of a confidential nature and been disclosed to the Customer by Edsential, its employees, agents, consultants or subcontractors save to the extent only that its employees or advisors need to know for the purpose of exercising the parties' rights under this Agreement (providing the Customer ensures that any such recipient complies with the provisions of this clause) or as may be required by law or any governmental or regulatory authority.
- 9.3 All materials, equipment and tools, drawings and data supplied by Edsential to the Customer shall at all times remain the exclusive property of Edsential and not be disposed of or used other than in accordance with Edsential's written instructions.

10. TERMINATION

- 10.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 10.1.1 the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 10.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a

- company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 10.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
 - 10.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);
 - 10.1.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
 - 10.1.6 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 10.1.7 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
 - 10.1.8 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
 - 10.1.9 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 10.1.1 to clause 10.1.7 (inclusive); or
 - 10.1.10 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

10.2 For the purposes of clause 10.1.1 **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this Agreement.

In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

- 10.3 Without affecting any other right or remedy available to it, Edsential may terminate this Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified to make such payment.
- 10.4 Either party may terminate this Agreement for any reason whatsoever by:
 - 10.4.1 giving to the other party not less than three months' notice, and having the effect that the Agreement will terminate on the last day of the Initial Term; or
 - 10.4.2 giving to the other party not less than three months' notice, and having the effect that the Agreement will terminate on the following anniversary of the last day of the Initial Term.
- 10.5 Edsential may terminate this Agreement, and/or any Goods or Services to be provided hereunder, at any time upon reasonable notice to the Customer and in the event that Edsential ceases to provide such Goods and/or Services as a part of its business.

11 CONSEQUENCES OF TERMINATION

- 11.1 On termination or expiry of this Agreement:
 - 11.1.1 the Customer shall immediately pay to Edsential all of Edsential's outstanding unpaid invoices and interest and, in respect of the Services and/or Goods supplied but for which no invoice has been submitted, Edsential may submit an invoice, which shall be payable immediately on receipt;

- 11.1.2 the Customer shall, return all of Edsential's Equipment, Pre-existing Materials and Deliverables. If the Customer fails to do so, then Edsential may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- 11.1.3 the following clauses shall continue in force: clause 7 (Intellectual Property Rights), clause 8 (*Limitation of Liability*), clause 9 (*Confidentiality*), clauses 15.11 and 15.12 (*governing law and jurisdiction*).
- 11.2 Termination or expiry of this 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 this Agreement which existed at or before the date of termination or expiry.

12 FORCE MAJEURE EVENT

- 12.1 A **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:
 - 12.1.1 acts of God, flood, drought, earthquake or other natural disaster;
 - 12.1.2 epidemic or pandemic;
 - 12.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - 12.1.4 nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; collapse of buildings, fire, explosion or accident; and
 - 12.1.5 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause);
 - 12.1.6 non-performance by suppliers or subcontractors); and
 - 12.1.7 interruption or failure of utility service.
- 12.2 Provided it has complied with clause 12.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 12.3 The Affected Party shall:
 - 12.3.1 as soon as reasonably practicable after the start of the Force Majeure Event notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and
 - 12.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

- 12.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four (4) weeks, the party not affected by the Force Majeure Event may terminate this Agreement by giving fourteen (14) days' written notice to the Affected 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.

13 RETENTION OF TITLE

- 13.1 Risk in the Goods shall pass to the Customer on delivery.

13.2 Title to the Goods shall not pass to the Customer until Edsential receives payment in full (in cleared funds) for the Goods and any other Goods that Edsential has supplied to the Customer.

14 TUPE

14.1 In this Clause 14 the following definitions apply:

(a) **Data Protection Legislation:** the Data Protection Act 1988, the Data Protection Directive (95/46/EC), 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 privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

(b) **Effective Date:** the Commencement Date.

(c) **Employees:** those employees whose contract of employment transfer to Edsential from the Customer as at the Effective Date and whose identities are supplied and confirmed to Edsential in the Employee Liability Information prior to the Effective Date.

(d) **Employee Liability Information:** in respect of each of the Employees:

- (i) the identity and age of the Employee;
- (ii) those particulars of employment that an employer is obliged to give the Employee under section 1 of the Employment Rights Act 1996;
- (iii) information about any disciplinary action taken against the Employee and any grievances raised by the Employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes or any other applicable code or statutory procedure applied, within the previous two years;
- (iv) information about any court or tribunal case, claim or action either brought by the Employee against the Customer within the previous two years or where the Customer has reasonable grounds to believe that such action may be brought against the Supplier arising out of the Employee's employment with the Customer; and
- (v) information about any collective agreement which will have effect after the [Effective Date] in relation to the Employee pursuant to regulation 5(a) of the Employment Regulations.

(e) **Employment Regulations:** TUPE

14.2 If, pursuant to the Employment Regulations, at the Effective Date Edsential will become the employer of the Employees then

14.3 The Customer represents, warrants and undertakes to Edsential that:

- (a) no persons are employed or engaged in the provision of Services other than the Employees;
- (b) none of the Employees has given or received notice terminating their employment or will be entitled to give notice as a result of the provisions of this agreement;
- (c) full particulars of the terms of employment of all the Employees (including all remuneration, incentives, bonuses, expenses and other payments and benefits whatsoever payable other than the pension benefits or

any Employees have been disclosed prior to the Agreement;

(d) there is not in existence any contract of employment with directors or employees of the Customer (or any contract for services with any individual) relating to the Services which cannot be terminated by three months' notice or less without giving rise to the making of a payment in lieu of notice or a claim for damages or compensation (other than a statutory redundancy payment or statutory compensation for unfair dismissal);

(e) in relation to each of the Employees (and so far as relevant to each of its former employees who were employed or engaged in the provision of the Services the Customer has:

(i) complied with all obligations imposed on it by Articles of Treaty on the Functioning of the European Union, European Commission Regulations and Directives and all statutes, regulations and codes of conduct relevant to the relations between it and its employees or it and any recognised trade union or appropriate representatives;

(ii) maintained adequate and suitable records regarding the service of each of its employees;

(iii) calculated and paid all holiday pay for periods of holiday taken under regulation 13 of the Working Time Regulations 1998 (SI 1998/1833) in accordance with the Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time;

(iv) complied with all collective agreements and customs and practices for the time being dealing with such relations or the conditions of service of its employees; and

(v) complied with all relevant orders and awards made under any statute affecting their conditions of service.

(f) the Customer has not been involved in any industrial or trade disputes in the last three years and to the best of the Customer's knowledge, information and belief there are no circumstances which may result in any industrial dispute involving any of the Employees and none of the provisions of this agreement including the identity of the Supplier is likely to lead to any industrial dispute;

(g) there is not outstanding any agreement or arrangement to which the Customer is party in relation to the Employees for profit sharing or for payment to any of the Employees of bonuses or for incentive payments or other similar matters;

(h) the Customer has not entered into any recognition agreement with a trade union in relation to the Employees nor has it done any act which may be construed as recognition;

(i) the Customer has complied with all recommendations made by the Advisory Conciliation and Arbitration Service in relation to the Employees and with all awards and declarations made by the Central Arbitration Committee in relation to the Employees;

(j) there is no agreement, arrangement, scheme or obligation (whether legal or moral) for the payment of any pensions, allowances, lump sums or other like

benefits on redundancy, on retirement or on death or during periods of sickness or disablement for the benefit of any of the Employees or former employees employed or engaged in the provision of the Services or for the benefit of dependants of such persons;

- (k) no amounts due to or in respect of any of the Employees (including PAYE and National Insurance [and pension contributions]) are in arrears or unpaid;
- (l) no monies or benefits other than in respect of contractual emoluments are payable to any of the Employees and there is not at present a claim, occurrence or state of affairs which may hereafter give rise to a claim against the Customer arising out of the employment or termination of employment of any of the Employees for compensation for loss of office or employment or otherwise and whether under contract or any statute or regulations or otherwise;
- (m) the Customer has provided the Employee Liability Information to Edsential regarding each of the Employees either in writing or by making it available to Edsential in a readily accessible form;
- (n) the Employee Liability Information contains information as at a specified date not more than 14 days before the date on which the information was provided to Edsential;
- (o) the Customer has notified Edsential in writing of any change in the Employee Liability Information since the date on which it was provided; and
- (p) the Employee Liability Information was provided not less than 28 days before the Effective Date;
- (q) the Customer has agreed to, and co-operated with, pre-transfer consultation by the transferee in accordance with Part IV of TULRCA, if required;

14.4 The Customer shall indemnify Edsential in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by Edsential including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

- (a) the termination by the Customer of the employment of any of the Employees;
- (b) anything done or omitted to be done in respect of any of the Employees which is deemed to have been done by Edsential by virtue of the Employment Regulations; and
- (c) any claim made at any time by any employee of the Customer other than the Employees who claim to have become an employee of or have rights against Edsential by virtue of the Employment Regulations (Claims);
provided that such costs, claims, expenses and liabilities are not payable as a result of any act or omission of Edsential.

14.5 Edsential shall procure that its employees, agents and successors in title shall promptly:

- (a) take such action in connection with the Claims as the Customer shall from time to time reasonably request;
- (b) provide free of charge all such assistance and information as the Customer may reasonably request relating to the Claims to enable the Claims to be pursued;
- (c) subject to any restriction imposed by law, provide the Customer, its legal and other advisers with access to all documents, records or other information held by Edsential relating to the Claims;
- (d) provide the Customer and/or its professional advisers and experts with access from time to time to such members of staff as may be necessary to assist the Customer with the preparation of its cases in relation to the Claims;
- (e) permit and require such employees as the Customer and/or its professional advisers may reasonably request to meet with the Customer and/or its legal advisers in normal working hours

to prepare witness statements for trial, attend meetings with Counsel or experts and/or to attend any Court hearing or trial in connection with the Claims for so long and as frequently as the Customer and/or its legal or other professional advisers may reasonably require;

- (f) provide such other assistance as the Customer may reasonably request in order to ensure the due and timely prosecution of the Claims;
- (g) resist in connection with the Claims any request for documents, information, access to relevant premises or to employees of the business by any third party without first informing the Customer and obtaining its agreement to any approval of the request; and
- (h) preserve and not waive legal professional privilege or any other privilege attaching to any of the documents or other information relating to the Claims in their possession without first obtaining the Customer's consent to such waiver, such consent not to be unreasonably withheld.

14.6 All salaries and other emoluments including holiday pay, taxation and National Insurance contributions and contributions to retirement benefit schemes relating to the Employees shall be borne by the Customer up to and including the Effective Date and by Edsential with effect from the Effective Date.

14.7 Edsential shall indemnify the Customer in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Customer including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

- (a) any failure by Edsential to comply with its obligations pursuant to the Employment Regulations; and
- (b) anything done or omitted to be done by Edsential in respect of any of the Employees whether before or after the Effective Date.

14.8 During the term of this agreement Edsential shall provide the Customer any information the Customer may reasonably require relating to any individual employed, assigned or engaged in providing the services under this agreement (subject to the Data Protection Legislation).

15 DISPUTE RESOLUTION

15.1 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement within twenty 20 Business Days of either party notifying the other of the dispute. Such efforts shall (if necessary) involve the escalation of the dispute to the commercial director or equivalent of each party.

15.2 Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.

15.3 If the dispute cannot be resolved by the parties pursuant to clause 13.1 the dispute shall be referred to mediation pursuant to the procedure set out in Clause 13.5 unless

either party considers that the dispute is not suitable for resolution by mediation.

- 15.4 The performance of this Agreement shall not be suspended, ceased or delayed by the reference of a dispute to mediation and the parties shall comply fully with the requirements of this Agreement at all times.
- 15.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 15.5.1 a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the parties or if they are unable to agree upon a Mediator then they shall apply to the Centre for Effective Dispute Resolution (“**CEDR**”) to appoint a Mediator;
- 15.5.2 the Parties shall within ten 10 Business Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;
- 15.5.3 unless otherwise agreed all negotiations connected with the dispute and any settlement or agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;
- 15.5.4 if the parties reach agreement on the resolution of the dispute the agreement shall be reduced to writing and shall be binding on the parties once it is signed by their duly authorised representatives;
- 15.5.5 failing agreement either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the agreement without the prior written consent of both parties; and
- 15.5.6 if the parties fail to reach agreement in the structured negotiations within forty 40 Business Days of the Mediator being appointed or such longer period as may be agreed by the parties then any dispute or difference between them may be referred to the English courts. Either party may exercise any remedy it may have.

16 NOTICES

- 16.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:
- 16.1.1 delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 16.1.2 sent by email to the address specified in the Contract Particulars.
- 16.2 Any notice or communication shall be deemed to have been received:
- 16.2.1 if delivered by hand, on signature of a delivery receipt;
- 16.2.2 if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00am on the second Business Day after posting; and
- 16.2.3 if sent by email, at 9.00am on the next Business Day after transmission.
- 16.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

17 GENERAL TERMS

- 17.2 Each party shall comply with all legislation, regulations, as amended, extended or re-enacted from time to time including all subordinate legislation made from time to time under them and all orders, notices, codes of practice and guidance made under them.
- 17.3
- 17.4 This Agreement is personal to the Customer and the Customer shall not assign, transfer, subcontract or deal in any other

manner with any of its rights and obligations under this Agreement. Edsential may at any time assign, transfer or deal in any other manner with any or all of its rights under this Agreement, provided that Edsential gives prior written notice of such dealing to the Customer.

- 17.5 The parties shall at all times comply with the provisions and requirements of the Data Protection Act 1998.
- 17.6 Subject to the remaining terms of this Agreement, no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 17.7 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 17.8 A failure or delay by a party to exercise any right or remedy provided under this 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 this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.9 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 17.10
- 17.10.1 If any provision or part-provision of this Agreement 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 this Agreement.
- 17.10.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 17.11 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.
- 17.12 If there is an inconsistency between any of the provisions of this Agreement and the provisions of the Contract Particulars, the provisions of the Contract Particulars shall prevail.
- 17.13 The headings to Conditions shall not affect their interpretation.
- 17.14 This Agreement shall be governed by and construed in accordance with English Law.
- 17.15 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.
- 17.16 A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any conditions of this Agreement.

Appendix 1

[Contract Particulars to be inserted]