

Terms and Conditions of Business of THE CIRCLE AGENCY

The following terms and conditions govern the relationship between Circle Agency Limited acting as a supplier to a client or customer:

Please see page 8 of this document for terms relating to our terms of procurement.

1 Parties

- 1.1 The Circle Agency Limited incorporated and registered in England and Wales with company number 05121638 whose registered office is at Unit 10, The Aquarium, King St. Reading, RG1 2AN and whose headquarters are at Unit 10, The Aquarium, King Street, Reading, RG1 2AN, [hereinafter referred to as "Company"]
- 1.2 Any person, organization or company who approaches the Company with a view to placing an order for services, [hereinafter referred to as "Client"] together referred to as ("**the Parties**")

2 Definitions and Interpretation

- 2.1 Terms of Business: means the Terms and Conditions of the Company, as set out in this document.
- 2.2 Services: means the provision of services as defined in the Quote provided.
- 2.3 Quote: means the documents supplied by the Company to the Client that define the Services to be provided and the Fees to be paid.
- 2.4 Confirmation of the order: means the Quotation has been signed off on behalf of the Client as evidence of the Client's acceptance of the Quote and the Company is in receipt of correspondence to confirm the same.
- 2.5 Contract: means the legally binding contract between the Client and the Company formed by these Terms of Business and the confirmation of the order.
- 2.6 Staffing: means the provision for Assignment of field staff registered and employed by the Company
- 2.7 Assignment: means a period during which a field staff carries out work for or on behalf of the Client as defined in the Quotation.
- 2.8 Field Staff: means employees or independent contractors registered with the Company, available for Assignments.
- 2.9 Project: means any paid time undertaken on behalf of any Client including all Services and Assignments.
- 2.10 Live Campaign: means the day in which a project goes live in the field until the day in which the project is no longer active in the field
- 2.11 Headings in these Terms of Business shall not affect their interpretation.

GENERAL PROVISIONS

3 Offer and Agreement

- 3.1 These General Terms of Business shall apply to all offers, legal relationships and agreements under which the Company provides goods and/or services of whatever nature to the Client. Deviations from and additions to the Terms of Business shall only be valid if they have been expressly agreed in writing.
- 3.2 All offers and other statements by the Company shall be without obligation, unless the Company expressly indicates otherwise in writing. The Client warrants the accuracy and completeness of the measurements, requirements, performance specifications and other data on which the Company bases its offer and which have been stated by or on behalf of the Client to the Company.
- 3.3 The application of the Client's purchasing or other terms and conditions is expressly rejected.
- 3.4 If any provision of the Terms of Business is found by a court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to not form part of the Terms of Business, and the validity and unenforceability of the other provisions of the Terms of Business shall not be affected and shall remain in full force.
- 3.5 The Company may always state additional requirements concerning communication between the Parties or performance of legal acts in writing or by electronic mail.

4 Price and payment

- 4.1 The Quote provided applies to the Client on the basis of all information provided to the Company by the Client to enable the Company to scope the Services required.
- 4.2 The total costs for the supply of Services will be advised to, and agreed by, the Client prior to the commencement of the Services as set out in the Confirmation of the order.
- 4.3 The Quote is valid only for the dates outlined within the Quote. Should the Project dates change, the Company reserve the right to issue an updated Quote.
- 4.4 No work will be carried out by the Company until an authorised purchase order, letter or electronic mail of confirmation has been received from the Client.
- 4.5 An additional billings schedule will be advised to, and agreed by, the client prior to the commencement of services. In most circumstances, and unless indicated otherwise within the agreed billing schedule we will require payment on the following basis;
 - i. 50% of funds upon acceptance of the contract
 - ii. 25% of funds upon commencement of the live campaign
 - iii. 25% within 30 days of the final day of live activity
- 4.6 Confirmation of the order is deemed to include acceptance of the Terms of Business and that a Contract has been entered into by the Parties.
- 4.7 In the event that a Project is postponed for any period up to 6 months, the Client will be charged for reasonable expenses incurred due to postponement, and 100% of all committed and uncancellable costs such as flights, uniform, booking fees, etc.
- 4.8 Any Project postponed for a period longer than 6 months will be considered to have been cancelled by the Client and Article 4.9 below shall apply.
- 4.9 In the event of a Project being cancelled, cancellation fees will be charged at the following rates:
 - i. Where cancellation takes place more than 60 days before the date specified for the commencement of the Assignment, 25% of the value of the agreed Fees, together with all applicable VAT thereon and 100% of all committed and uncancellable costs (including time spent) incurred by the Company.
 - ii. Where cancellation takes place more than 30 days before the date specified for the commencement of the Assignment, 50% of the value of the agreed Fees, together with all applicable VAT thereon and 100% of all committed (including time spent) and uncancellable costs incurred by the Company.
 - iii. Where cancellation takes place less than 14 days before the date specified for the commencement of the assignment, 100% of the value of the agreed Fees, together with all applicable VAT thereon and 100% of all committed and uncancellable costs incurred by the Company.
- 4.10 Any deposit paid shall not be refunded in any circumstances where cancellation takes place within 30 days of the specified commencement date of the campaign unless otherwise previously agreed in writing by the Company.
- 4.11 All prices are exclusive of Value Added Taxes. All such taxes are payable by the Client and will be applied in accordance with English law in force at the tax point date.
- 4.12 the Company reserves the right to charge an additional 2.5 per cent of fees payable hereunder in respect of any insurance effected by the Company in connection with any Assignment. Event cancellation insurance is not covered by this and can be undertaken at the Clients expense if deemed necessary on an event by event basis.
- 4.13 In the absence of a specific provision, the Client shall pay within thirty days after the invoice date. The Client shall not be entitled to set off or to suspend a payment.
- 4.14 All queries relating to the Company's invoices must be raised in writing within 14 days of the date the invoice has been issued.
- 4.15 If the Client does not pay the amounts owed in a timely manner and as per the billing schedule, the Client shall owe legal interest on the outstanding amount at a rate of 4% per annum above the Barclay's Bank base rate, without any written demand or notice of default being necessary. If the Client still does not pay the claim after a written demand or notice of default, the Company can pass on the claim for collection, in which case the Client shall, in addition to the total amount owed then, be obliged to pay for all in-court and out-of-court expenses, including expenses charged by external experts in addition to the costs determined at law. The Client shall also owe the expenses incurred by the Company in regard to unsuccessful mediation if the Client is ordered by a judgment to pay the outstanding amount in full or in part.

5 Confidential information, taking over employees and privacy

- 5.1 Each of the Parties warrants that all of the information received by the other Party which is known to be or should be known to be confidential in nature shall remain secret, unless a legal obligation mandates disclosure

of that information. The Party receiving the confidential information shall only use it for the purpose for which it has been provided. Information shall in any event be considered confidential if it is designated by either of the Parties as such.

- 5.2 During the term of the Contract and for one year after it is terminated, each of the Parties shall not, unless it receives prior written permission from the other Party, take on employees, or field staff of the other Party who are or were involved in executing the Contract or otherwise have these employees work for it, directly or indirectly. As the occasion arises, the Company shall not withhold the permission concerned if the Client has offered appropriate compensation.
- 5.3 Clause 5.2 extends directly to the employment of field staff employed by the company for the purpose of carrying out projects and or assignments for and on behalf of the client. Should the client employ a third party agency from which to employ field staff that have previously worked for the company, the obligations of the client under clause 5.2 will apply.
- 5.4 The Client shall indemnify the Company against claims by persons whose personal data has been recorded or processed in connection with a register of persons maintained by the Client or for which the Client is responsible under law or otherwise, unless the Client proves that the facts underlying the claim are solely imputable to the Company.

6 Retention of title and rights, specification and possessory lien

- 6.1 All objects delivered to the Client shall remain the Company's property until all amounts owed by the Client for the objects delivered or to be delivered or work performed or to be performed under the Contract, as well as all other amounts which the Client owes due to a breach of its payment obligation, have been paid fully to the Company. If the Client creates a new object wholly or partly from the objects delivered by the Company, the Client shall create that object solely for the Company and the Client shall hold the newly created object for the Company until the Client has paid all amounts owed under the Contract; in that event, the Company shall possess all rights as the owner of the newly created object until the time the Client makes full payment.
- 6.2 As the occasion arises, rights shall always be granted or transferred to the Client on the condition that the Client pay the agreed fees fully and in a timely manner and in any event in accordance with the payment provisions, more particularly described in clause 4.13 above.
- 6.3 Notwithstanding any delivery obligation, the Company may maintain possession of the objects, products, proprietary rights, information, documents, databases and interim or other results of the Company's Services which have been received or generated in connection with the Contract until the Client has paid all amounts owed to the Company.

7 Intellectual or industrial property rights

- 7.1 All intellectual and industrial property rights to programme methodologies, equipment or other materials developed or provided under the Contract, such as analyses, designs, documentation, reports, offers, as well as preparatory materials in that regard, shall be held solely by the Company, its licensors or its suppliers.
- 7.2 If, in deviation from Article 7.1, the Company is prepared to undertake to transfer an intellectual or industrial property right, such an obligation may only be entered into expressly in writing. If the Parties expressly agree in writing that intellectual or industrial property rights regarding programme methodologies, databases, formulas, equipment or other materials specifically developed for the Client shall be transferred to the Client, this shall not affect the Company's right to apply and to use, either for itself or for third parties, the parts, general principles, ideas, designs, documentation, works, and the like underlying that development, without any limitation on other purposes. Nor shall a transfer of intellectual or industrial property rights affect the Company's right to undertake developments for itself or third parties which are similar to those done for the Client.
- 7.3 The Client shall not be allowed to remove or modify any designation concerning the confidential nature or concerning copyrights, trademarks, business names or other intellectual or industrial property rights from equipment or materials.
- 7.4 The Client warrants as a continuing warranty that it has all due authority required to enter into these presents without the concurrence of or infringement of the rights of any third party.
- 7.5 The Client warrants as a continuing warranty that all promotional material client pro forma's or any other information supplied to the Company by or on behalf of the Client in connection with the Assignment does not infringe the rights of any third party and is lawful true complete and accurate in all respects and shall be provided with all due expedition as and when required.

- 7.6 The Client warrants as a continuing warranty that the Client is or is duly authorised on behalf of the beneficial owner free from encumbrances of the intellectual property rights in all items of artwork logos, designs, symbols, emblems, insignia, fascia, slogans, copyrights, know-how, information, drawings, plans, advertising publicity and other identifying materials or information whatsoever in which intellectual property rights or rights in the nature of intellectual property rights may subsist supplied by or on behalf of the Client to the Company and/or otherwise utilised by the Company in connection with the assignment (Client Intellectual Property);
- 7.7 The Client warrants as a continuing warranty that without warranty such rights of the Company in any copyright and other intellectual property rights of the Company in work arising from or created, produced or developed by the Company under or in the course of the relevant Assignment (if any) (“the Works”), shall (unless otherwise agreed) upon payment by the Client of all sums due under these terms vest in and shall be and remain the sole and exclusive property of the Client.
- 7.8 The Client warrants as a continuing warranty that the Client hereby grants or procures the grant to the Company with full title guarantee such irrevocable royalty free licence and consent [and in the case of moral rights grants such waiver thereof] as the Company may require in order to:
- i. Lawfully use the Client’s Intellectual Property and the Works for the purposes of carrying out and completing the Assignment.
 - ii. Lawfully use the Client’s Intellectual Property and the Works at all times during and following determination of any agreement with the Client governed by these terms to publicise and market the goods and/or services of the Company.
- 7.9 The Client warrants as a continuing warranty that the Client is the beneficial owner free from encumbrances of all items of stock and equipment or any other goods supplied by or on behalf of the Client in connection with any Assignment and that such items are of reasonable quality and in good working order.

8 Risk

- 8.1 Unless otherwise agreed in writing the risk of loss or theft of or damage to stock and equipment objects, products, software or data supplied by or on behalf of the Client shall remain with the Client.

9 Cooperation by the Client

- 9.1 The Client shall always furnish the Company in a timely manner with all data or information which is useful and necessary to execute the Contract properly and provide full cooperation. If the Client utilises its own employees in cooperating in the execution of the Contract, these employees shall possess the necessary know how, experience, abilities and characteristics.

10 Delivery periods

- 10.1 All delivery and other periods stated or agreed by the Company have, to the best of its knowledge, been determined based on data known to the Company when it entered into the Contract. The Company shall properly exert its best efforts to observe agreed delivery and other periods as much as possible. The mere fact that a stated or agreed delivery or other period has been exceeded shall not cause the Company to be in default. In all cases, hence, even if the Parties have expressly agreed on a firm date in writing, the Company shall not be in default because of a time period being exceeded until the Client has provided it with a written notice of default. The Company shall not be bound by firm or nonfirm delivery or other periods which can no longer be met on account of circumstances beyond its control which have occurred after the Contract was concluded. Nor shall the Company be bound by firm or nonfirm delivery periods if the Parties have agreed to modify the substance or scope of the Contract (additional work, change in specifications etc.). If any period threatens to be exceeded, the Company and Client shall consult with each other as soon as possible.

11 Termination of the Contract

- 11.1 Each of the Parties shall only be entitled to rescind the Contract if the other Party imputably fails to perform material obligations under the Contract- in all cases, after having received a proper written notice of default which is as detailed as possible and in which it has been given a reasonable time period to remedy the breach.
- 11.2 If a Contract which, by its nature and substance, will not end when certain conditions, acts or the like are fulfilled, has been entered into for an indefinite period of time, each of the Parties may terminate the Contract

by written notice after proper consultation and with a statement of reasons. If the Parties have not agreed on an express notice period, a reasonable notice period of no less than 3 months must be observed in terminating the Contract. The Parties shall never be liable for damages for terminating the Contract.

- 11.3 In deviation from what has been provided for by statute in this regard through directory law, the Client may only terminate the Contract in the cases stated in these Terms of Business.
- 11.4 Each of the Parties may partly or completely terminate the Contract in writing with immediate effect and without a notice of default if the other Party is granted a provisional or non-provisional suspension of payments, if a petition for liquidation is filed with regard to the other Party or if the other Party's business is wound up or terminated for other reasons besides a business reconstruction or merger. The Company shall never be obliged on account of this termination to refund funds already received or to pay damages. In the event of the Client's liquidation, the right to use software provided to the Client shall be extinguished by law.
- 11.5 If, at the time of the rescission referred to in Article 11.1, the Client has already received performance in connection with execution of the Contract, this performance and the related payment obligation shall not be cancelled, unless the Client proves that the Company is in default with regard to that performance. Amounts which the Company has invoiced before the rescission in connection with what it has already properly performed or delivered to execute the Contract shall, subject to the provisions in the preceding sentence, continue to be owed in full and shall be immediately payable at the time of rescission.

12 The Company's liability; indemnity

- 12.1 The Company's total liability for imputably failing to perform the Contract shall be limited to compensating direct damage, up to at most the amount of the price (exclusive of VAT) stipulated for that Contract. If the Contract is primarily a continuing performance agreement with a term exceeding one year, the price stipulated for the Contract shall be set at the total of the fees (exclusive of VAT) stipulated for one year. The total compensation for direct damage shall not, however, in any case exceed GBP 1,000,000 (one million pounds). "Direct damage" shall solely mean:
 - i. reasonable expenses which the Client would have to incur to make the Company's performance conform to the Contract; this alternative damage shall not be compensated, however, if the Contract is rescinded by or at the suit of the Client;
 - ii. reasonable expenses incurred to determine the cause and scope of the damage, insofar as the determination relates to direct damage within the meaning of these Terms of Business;
 - iii. Reasonable expenses incurred to prevent or mitigate damage, insofar as the Client demonstrates that these expenses resulted in mitigation of direct damage within the meaning of these Terms of Business.
- 12.2 The Company's liability for injury or damage through death or bodily injury or because of material damage to objects shall not exceed GBP 10,000,000 (ten million pounds) until and unless insurance is undertaken at the Client's expense as deemed necessary on an event by event basis.
- 12.3 The Company's liability for consequential damage, consequential loss, lost profits, lost savings, loss of goodwill, damage through business interruptions, damage ensuing from claims by the Client's customers, mutilation or loss of data, damage relating to the use of objects, materials or software of third parties prescribed by the Client for the Company, damage relating to engagement of suppliers prescribed by the Client for the Company and all other forms of damage or injury besides those mentioned in Article 12.1 and 12.2, on any account whatsoever, shall be excluded.
- 12.4 The limitations mentioned in the preceding paragraphs of this Article 12 shall not apply if and insofar as the damage or injury is the result of intentional acts or omissions or gross negligence by the Company or its managers.
- 12.5 The Company's liability because of an imputable failure to perform an Contract shall in all cases only arise if the Client immediately and properly provides a written notice of default to the Company, with a reasonable time period for remedying the failure being given and the Company still imputably failing to perform its obligations after that period as well. The notice of default must contain a description of the breach which is as complete and specific as possible, so that the Company can respond adequately.
- 12.6 For any right to damages to exist, the Client must always report the damage or injury to the Company in writing as soon as possible after it occurs. Any claim to damages against the Company shall be extinguished by the mere lapse of 24 months after the claim arises.
- 12.7 The Client shall indemnify the Company against all third-party claims because of product liability ensuing from a defect in a product or system which has been delivered by the Client to a third party and which partly consisted of equipment, software or other materials delivered by the Company, except if and insofar as the Client proves that the damage or injury was caused by that equipment, software or other materials.

12.8 The provisions in this Article 12 shall also apply for the benefit of all legal and natural persons utilised by the Company in executing the Contract.

13 Force Majeure

13.1 A Party shall not be obliged to perform any obligation if it is prevented from doing so by a situation of force majeure. "Force majeure" shall also include a situation of force majeure for the Company's suppliers, improper performance of obligations by suppliers prescribed by the Client for the Company, as well as defects in objects, materials or software of third parties which the Client has required the Company to use.

13.2 If a situation of force majeure lasts for more than 90 days, the Parties shall be entitled to terminate the Contract by giving the other party 14 days prior written notice. What has already been performed pursuant to the Contract shall in that case be settled proportionately, without the Parties otherwise owing each other anything.

14 Applicable law

14.1 English law shall govern the Contracts between the Company and the Client.

SERVICES

In addition to the General Provisions in these Terms of Business, the provisions set forth in this Chapter "Services" shall apply if the Company provides services, such as campaign planning, creative development, design and production, project management, facilities management, logistics and product handling, event management, evaluation, campaign reporting and auditing, filming and photography, data management & CRM, analysis and measurement, giving advice, feasibility studies or consultancy. These provisions shall not affect the provisions included in the Terms of Business concerning specific services.

15 Performance

15.1 The Company shall, to the best of its ability, do its utmost to perform the services with due care and, where appropriate, in accordance with the agreements and procedures recorded in writing with the Client. All of the Company's services shall be performed on the basis of a best efforts obligation, unless and insofar as the Company has expressly promised a result in the written Contract and the result concerned has also been described with sufficient definiteness. Any agreements concerning a service level must always be expressly agreed in writing.

15.2 If it has been agreed that the services shall be provided in stages, the Company shall be entitled to postpone the start of the services which are part of a stage until the Client has approved the results of the preceding stage in writing.

15.3 In performing the services, the Company shall only be obliged to follow timely and sensible instructions of the Client if this has been expressly agreed in writing. The Company shall not be required to follow instructions which change or supplement the substance or scope of the agreed services; if such instructions are followed, however, the work in question shall be compensated pursuant to Article 15.

16 Modification and additional work

16.1 If, at the request of or with prior consent from the Client, the Company has performed work or rendered other performance which goes beyond the substance or scope of the agreed Services, the Client shall pay for that work or performance according to the Company's usual rates. Expanding or modifying an analysis, a design or specifications shall also constitute additional work. The Company shall never be obliged to satisfy such a request, and it may require that a separate written Contract be concluded.

16.2 The Client accepts that work or performance as referred to in Article 15.1 may affect the agreed or expected time of completion of the services and the mutual responsibilities of the Client and Company. The fact that additional work (or the demand for it) arises during performance of the Contract shall never be a ground for the Client to rescind or terminate the Contract.

16.3 Insofar as a set price has been agreed for the services, the Company shall, upon request, inform the Client in writing in advance about the financial consequences of the extra work or performance.

STAFFING

In addition to the General Provisions in the Terms of Business, the provisions set forth in this Chapter "Staffing" shall apply if The Company provides field staff or independent contractors registered with the Company, available for Assignments. These provisions shall not affect the provisions included in these Terms of Business concerning specific Services.

17 Assignments

- 17.1 Where Services include provision of Field Staff for Assignments, the Client shall specify its requirements by providing full details of the Assignments for which the Field Staff is required on or before Confirmation of the Order.
- 17.2 The Client shall not allow any Field Staff to undertake any activities outside the scope of the Assignment notified to the Company in accordance with clause 17.1. Any subsequent changes to the details of the Assignment must be agreed with the Company in writing and the Company will communicate any agreed changes to the Field Staff.
- 17.3 The Client hereby undertakes to comply with all obligations, duties and regulations (whether statutory or otherwise and without prejudice to the generality of the foregoing those relating to the place, nature or system of work) in any way arising from or directly or indirectly connected with the Assignment undertaken by the Field Staff.
- 17.4 Field Staff shall not be required to provide Services for more than those specified in the agreed contract or assignment. Each shift must include one 20 minute break for every four hours worked per day, unless otherwise agreed between the Company and the Client and any hours so worked in excess of the aforesaid limits shall be charged at the hourly overtime rates then specified by the Company.
- 17.5 The Client undertakes that in the event of the Client engaging any Field Staff directly, or indirectly via a third party, whether for a definite or indefinite period, within 6 months of the date of the last Assignment under which the Field Staff worked on behalf of the Client, the Client shall pay to the Company an introduction fee of £750 per member of staff.
- 17.6 If the Client is unsatisfied with the Field Staff, the Client must inform the Company of this immediately in writing or by electronic mail. The Client must set out the reasons why the Field Staff is unsatisfactory. The Company will then terminate the Field Staff's services for the Assignment forthwith and, where possible, provide replacement Field Staff to fulfil the Company's obligations under the Assignment. Any complaints in relation to a Field Staff will be dealt with in accordance with the Company's Staff Code of Conduct.
- 17.7 The Company will extend any period of Assignment on no less favourable terms.

18 Cancellations

- 18.1 Cancellation of Assignments for Field Staff must be made by electronic mail to The Company as soon as possible. In the event of a cancellation the following charges will apply to field staff costs only:
 - i. Within 30 days prior to event - 25% of the value of agreed fees and 100% of all committed and uncancellable costs;
 - ii. Within 14 days prior to event- 50% of the value of agreed fees and 100% of all committed and uncancellable costs;
 - iii. Within 7 days hours prior to event - 100% of the value of agreed fees and 100% of all committed and uncancellable costs;
- 18.2 In the event of the cancellation of a Project containing as an element Assignment(s) for Field Staff, fees for Assignments of Field Staff are considered as part of the total Project cost and be subject to cancellation fees subject to clause in Article 4.8.

Terms & Conditions of Procurement of THE CIRCLE AGENCY

The following Terms of Procurement (TP's) govern the relationship between Circle Agency Limited and any company wishing to supply goods or services to us;

1. Parties

- 1.1 The Circle Agency Limited incorporated and registered in England and Wales with company number 05121638 whose registered office is at Unit 10, The Aquarium, King St. Reading, RG1 2AN and whose headquarters are at Unit 10, The Aquarium, King Street, Reading, RG1 2AN, [hereinafter referred to as "Company"]
- 1.2 Any person, organization or company who approaches the Company with a view to supplying us with any goods or services, [hereinafter referred to as "the Supplier"] together referred to as ("the Parties")

2. Definitions and Interpretation

- 2.1 Terms of Procurement (TP's): means the Terms governing the procurement and provision of goods and services to the Company, as set out in this document.
- 2.2 Agreement: means an agreement between Circle Agency (The Company) and supplier, made via PO (Purchase Order).
- 2.3 Charges: means charges payable for the deliverables as agreed between the parties in quote.
- 2.4 Completion Date(s): means dates set for the delivery and/or provision of the deliverables in the PO, an agreement or as otherwise stated by the parties.
- 2.5 Deliverables: means goods, services and or software (as the contact requires)
- 2.6 EFM: means an event of force majeure being one or more of the following; riot, civil unrest, military action, terrorist act, earthquake, storm, flood, inability to obtain service of power, fuel or transport, exercise of emergency powers by and governmental authority
- 2.7 Employment Liabilities: means losses, costs, claims, demands, awards, fines, liabilities or expenses (including reasonable legal expenses) arising from the employment of any person, the termination of such employment, the operation and/or termination of any collective agreement any dispute, any dispute that relates to such employment, or collective agreement, or their termination, and any failure to discharge in full any obligation to inform or consult appropriate representatives or any person about the transfer of employees under TUPE;
- 2.8 Future Supplier: means any third party providing deliverables to Circle Agency similar to the deliverables (or any part of the Deliverables) following the expiry or termination of an agreement (in whole or in part).
- 2.9 Goods: means goods to be supplied under an agreement and where relevant includes and documentation supplied to aid use of those goods.
- 2.10 IPR: means any (and any rights subsisting in any) patents, designs, trademarks and trade names (whether registered or unregistered), copyright and related rights, moral rights, database rights, know-how and confidential information all other intellectual property rights anywhere in the world which currently exist or are recognised in the future and applications, extensions and renewals in relation to any such rights.
- 2.11 Manufacturer means the manufacture of goods (whether or not they are also the supplier)
- 2.12 Party means either Circle Agency or Supplier and 'Parties' shall mean both of them.
- 2.13 PO: means a Circle Agency Purchase Order
- 2.14 Quote: means the documents supplied by the supplier to the company that define the fees to be paid for the Services to be provided as per the specification.
- 2.15 Services: means the services to be provided under the agreement;
- 2.16 Software: means the software to be supplied *whether licensed or assigned) under an agreement and where relevant, includes, any documentation supplied to aid the use of such software.
- 2.17 Specification: means the description or specification of the deliverables as agreed between Circle Agency and the supplier in writing and on behalf of both parties. This could come in the form of a pitch document, email correspondence or any other form of written correspondence.
- 2.18 Supplier Personnel means any person used by the supplier (whether directly or indirectly) to perform any of its obligations under an agreement.
- 2.19 Circle Agency means the company in whose name a PO (by which an agreement is made) is placed.
- 2.20 VAT means VAT (Value added Tax) chargeable under the VAT Act 1994 and any subsequent amendments.
- 2.21 Headings in these terms of procurement shall not affect their interpretation.

3. Incorporation of Terms and Order of Precedence

- 3.1 These Circle Agency terms of procurement are incorporated into and shall govern (to the exclusion of all other terms which relate to the same subject matter, including without limitation any terms appearing on Supplier's invoices or other paperwork) each and every agreement unless the parties agree and sign up to separate terms and conditions.
- 3.2 No conduct by Circle Agency shall be deemed to constitute acceptance of any terms put forward by Supplier or any other terms. Circle Agency shall be entitled to vary the terms and conditions set out herein from time to time and any such variation shall be binding upon Supplier with effect from the date at which the Circle Agency PTs, as set out on the Circle Agency Website, are updated to reflect the relevant variation. It shall be the Supplier's responsibility to visit the Circle Agency website periodically for the purpose of familiarising itself with the then current Circle Agency procurement terms. Circle Agency hereby agrees to buy, and Supplier hereby agrees to supply the Deliverables in accordance with and subject to this clause. To the extent that any of the terms agreed and set out in a PO is inconsistent with any provision of these terms of procurement (PT's) (other than in respect of Charges which shall be those as are agreed between the parties in an Agreement), the variable details set out in a PO shall prevail. In the event of any inconsistency between an Agreement and another agreement which has been entered into between Circle Agency and the Supplier which relates to the same subject matter and which has been signed by authorised signatories of both Parties, the terms of such agreement shall prevail.

4. Changes in Requirements

- 4.1 Acting reasonably, Circle Agency may at any time direct by prior notice in writing changes to an agreement. If any such change causes an increase in or decrease in the cost of or timing required to provide the deliverables, either party (acting reasonably) shall be entitled to request an equitable adjustment to the charges or completion date or both. Any request made by the supplier for adjustment under this clause must be made within 15 days from the date Circle Agency of the notification of the change.
- 4.2 The Supplier shall not change specification of deliverables without prior written consent of Circle Agency (such consent not to be unreasonably withheld).

5. Relevance of Schedules

- 5.1 These Circle Agency PTs (including the Schedules) shall apply to the sale and purchase of Deliverables as follows:
- 5.1.1 The supply of goods shall be subject to the additional terms set out in Schedule 1
 - 5.1.2 The provision of services shall be subject to the additional terms of schedule 2
 - 5.1.3 The licence of software shall be subject to the additional terms of schedule 3
- 5.2 For the avoidance of doubt, schedules 1 to 3 are not mutually exclusive. Accordingly one or more of the schedules 1 to 3 may apply to the supply of each deliverable (or part thereof).
- 5.3 If the agreement does not relate to either goods or services or software, than the above referenced schedules do not apply to that agreement.

6.0 Circle Agency Policies

- 6.1 In providing deliverables, suppliers shall use its best endeavours to observe the Circle Agency policies in all material respects.
- 6.2 If so required by Circle Agency the supplier will demonstrate to Circle Agency that it maintains policies which align with the requirements of the Circle Agency policies.
- 6.3 Circle Agency may terminate any agreement immediately by notice in writing by Circle Agency if the supplier is in material or continually breaching a Circle Agency policy.

7.0 Charges and Payment Terms

- 7.1 Subject to clause 3.1 charges shall be as set out in an Agreement and shall remain fixed until completion of an Agreement. Except as expressly stated herein, all Charges are exclusive of VAT (if any) but otherwise fully inclusive including without limitation: (a) all royalties, licences fees or other expenses arising from the use or sub-licence (if

permitted) by Circle Agency Limited, their employees, sub-contractors or agents, (b) supply and, where applicable delivery, off-loading and installation, and (c) in the case of Goods, delivery to Circle Agency premises (as may be renewed or replaced).

7.2 Supplier shall, following Acceptance of any Deliverables, be entitled to submit an invoice for the appropriate Charge. Each VAT invoice shall contain the particulars required by statute in respect of VAT, the PO number and any other particulars prescribed in the PO and shall be sent to the invoice address specified in the PO. Payment of a correct invoice submitted in accordance with this clause shall be processed by Circle Agency on the first Friday after expiry of 60 calendar days from the date of receipt of invoice. Circle Agency reserves the right to refuse payment of part or all of any invoice which is not submitted in accordance with these Circle Agency PTs. If either party fails to pay any amount due on time, the other party shall be entitled to charge and receive interest at a rate of 2% per annum above the base lending rate from time to time of Barclays Bank plc. Such interest shall accrue from the due date until the date of payment and shall be calculated on a daily basis.

8. Termination

8.1 Any agreement may be terminated immediately by notice in writing by either party if the other party is in material or continuing breach of any of its obligations.

8.2 Any Agreement may be terminated by either Party if any of the following events occurs in respect of the other Party (or any event analogous to any of the following occurs in respect of the other Party in a jurisdiction other than England and Wales): (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or for the assignment for the benefit of, its creditors; (b) a shareholder's meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); (c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or for the making of an administration order, or an application is made for the appointment of a provisional liquidator or a creditor's meeting is convened pursuant to s.98 of Insolvency Act 1986; (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or (e) it is or becomes insolvent within the meaning of s.123 Insolvency Act 1986

8.3 In the case of an Agreement related to Goods, Circle Agency shall be entitled without cost or liability to terminate an Agreement in respect of all or part of a PO at any time up to 30 Working Days prior to the agreed date for shipping of the Goods on giving written notice to the Supplier. In the case of an Agreement relating to Deliverables other than Goods, Circle Agency shall be entitled without cost or liability to terminate the Agreement in respect of all or part of a PO at any time on giving 30 Working Days notice to the Supplier. In the event that Circle Agency terminates an Agreement or any part of an Agreement pursuant to this Clause and without limiting clause 8.5 below, Circle Agency shall pay the reasonable costs and expenses incurred by the Supplier in connection with the Agreement or part which has been terminated up to the date of termination provided always that the Supplier shall have an obligation to mitigate such costs and expenses and to demonstrate to Circle Agency reasonable satisfaction that the same have been incurred.

8.4 If at any time during the term of an Agreement the Supplier is subject to a Change of Control, Circle Agency shall be entitled to terminate absolutely that Agreement without penalty immediately by notice in writing.

8.5 If an Agreement is terminated for any reason: (a) any sums due to Circle Agency shall become immediately payable by Supplier without set-off or deduction; (b) Supplier shall return to Circle Agency all tangible property and Confidential Information belonging to Circle Agency and or its clients, in its possession, custody or control and Circle Agency shall return to Supplier all of its tangible property and Confidential Information in its possession, custody or control; (c) each Party will cease use of the other Party's Confidential Information and intellectual property; and (d) each Party will, at its sole option, either return or destroy all records, documentation, data, and any other information and all copies thereof which are owned by or licensed to the other Party, and on the other Party's request, a director of the returning/destroying Party shall certify in writing that the Party has complied with this clause.

8.6 Termination will not prejudice or affect any right of action or remedy already accrued to either Party.

8.7 Notwithstanding any termination of an Agreement the provisions which by their nature are intended to survive such termination will remain in full force and effect including without limitation the obligations of confidentiality.

8.8 If a party (the first party) is prevented from performing its obligations under an agreement by an EFM which continues for more than 30 days then the other party will be entitled to terminate that agreement without liability to the first party forthwith on giving written notice of termination to the first party.

9. Force Majeure

9.1 Subject to the remaining provisions of this clause, to the extent that either Party is prevented from performing its obligations under an Agreement by an EFM beyond such Party's reasonable control, such Party's obligation to perform its obligations under that Agreement will (during the continuation of the EFM) be read and construed as an obligation to perform such obligations to the best level reasonably achievable in the circumstances.

9.2 Notwithstanding clause 9.1, if Supplier claims that it is affected by an EFM, such claim shall be valid only to the extent that a prudent supplier operating to standards expected of a leading supplier of the Deliverables in question could not have foreseen and prevented or avoided the effect of such event or occurrence.

9.3 A Party claiming to be affected by an EFM will not be entitled to invoke the provisions of clause 9.1 unless it performs fully the following obligations: (a) on becoming aware of any EFM it shall have notified the other Party by the most expeditious method then available, giving details of the EFM, the obligations on its part which are affected and its reasonable estimate of the period for which such failure or delay will continue; and (b) it takes all reasonable steps to prevent, avoid, overcome and mitigate the effects of such EFM.

10. Indemnity

10.1 Supplier shall be liable to Circle Agency for (and in respect of any third party claims against Circle Agency, shall indemnify Circle Agency and hold Circle Agency harmless against): (a) all claims, liability, demands, proceedings, costs and expenses arising as a result of any act or omission of Supplier in the performance or purported performance of its obligations under an Agreement, except to the extent such claims, liability, demands, proceedings, costs or expenses are directly attributable to the negligence of Circle Agency; and (b) any costs, damages, liabilities, losses or expenses (including legal expenses) incurred by Circle Agency and arising from any legal actions, claims or demands brought against Circle Agency by any third party which state that Circle Agency (or its sub-contractor's or agent's) possession and/or use of the Deliverables or Documentation (or any part thereof) infringes any IPRs of a third party (a "Claim"). If a Claim is made: (A) Circle Agency shall: (i) inform Supplier of it; (ii) provide Supplier (at Supplier's expense) with such assistance as Supplier may reasonably require in connection with defending the same; and (iii) make no admission of liability without Supplier's prior written consent (such consent not to be unreasonably withheld); and (B) Supplier shall (i) replace the infringing material with non-infringing material that functions and performs at least as well as the infringing material and complies with any relevant Specification or other requirements of an Agreement, or (ii) obtain the right for Circle Agency lawfully to possess and use in accordance with the provisions of these Circle Agency PTs all the relevant Deliverables and/or documentation and to exercise the rights granted under an Agreement. In the event that Supplier is unable to provide either of the remedies set out in B(i) or B(ii) above to Circle Agency's satisfaction, Supplier shall refund to Circle Agency all amounts paid to Supplier under the applicable Agreement.

10.2 The following matters shall be excluded from the indemnity contained in clause 10.1 above (except to the extent that such matters are contemplated and agreed by the Parties having regard to the provisions of an Agreement, and Supplier's actual knowledge of Circle Agency's intentions as to the use of Deliverables): (i) infringements arising directly from the use of Confidential Information supplied by Circle Agency, where Supplier's use of such Confidential Information in the performance of an Agreement is the sole and direct cause of such infringement; (ii) infringements arising from the modification of the Deliverables or Documentation by Circle Agency where such modification is not authorised by or within the reasonable contemplation of Supplier and the claimed infringement arises solely and directly from such modification.

11. Cap on Liability

11.1 Nothing shall exclude or limit the liability of either Party for death or personal injury caused by its negligence, or for fraud, fraudulent misstatement or for any other liability that may not be excluded or limited by law.

11.2 Except for the liability of the Supplier under clause 10, the aggregate liability of either Party to the other under an Agreement for all losses, damages, costs, claims or expenses suffered by the other arising out of or in connection with any breach by such Party of the terms of an Agreement or any tort or breach of statutory duty in connection with such Party's obligations under an Agreement shall be limited in the following ways: (a) the amount recoverable shall be no more than the greater of £1,000,000 or 125% of the total of all sums paid or due to Supplier for Deliverables in any 12 month period in which the circumstances giving rise to such claim(s) arise(s).

12. Entire Agreement

12.1 Each Agreement (including the terms of any relevant PO, Schedule of works and or other written documentation that) sets out the full extent of the Parties' obligations and liabilities arising out of or in connection with such Agreement, and there are no conditions, warranties, representations or terms, express or implied, that are binding on the Parties except as specifically stated or contemplated in such Agreement.

12.2 Any condition, warranty, representation or other term which might otherwise be implied into or incorporated or any collateral contract, whether by statute, common law or otherwise, is hereby expressly excluded. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the Parties prior to entering into an Agreement, except as expressly stated in each Agreement.

12.3 Neither Party shall have any remedy in respect of any untrue statement made by the other upon which that Party relied in entering into an Agreement (unless such untrue statement was made fraudulently) and that party's only remedies shall be for breach of contract as provided herein.

13.0 Severability

If any of the provisions of an Agreement is judged to be invalid, illegal or unenforceable, the continuation in full force and effect of the remainder of that Agreement will not be prejudiced but such provision will be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the Parties will be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the Parties as set out in such Agreement.

14. Waiver

No failure or delay by either Party in enforcing its respective rights will prejudice or restrict the rights of that Party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

15. Relationship of the Parties

The relationship between Circle Agency and Supplier is that of purchaser and supplier. Nothing in an Agreement is intended to create a partnership or joint venture of any kind between the Parties, or to authorise either Party to act as agent for the other. Save where expressly so stated in an Agreement neither Party will have authority to act in the name of or on behalf of or otherwise to bind the other.

16. Assignment and Sub Contracting

16.1 Subject to clause 16.2, neither Party shall be entitled to assign, novate or otherwise to transfer any of its rights and/or obligations under an Agreement without the prior written consent of the other Party (not to be unreasonably withheld).

16.2 Circle Agency shall be entitled to assign, novate or otherwise to transfer any or all of its rights and/or obligations under an Agreement to any member of the Circle Agency Group provided that it shall give written notification to Supplier of any exercise of its rights under this clause.

17. Third Party Rights

Save as expressly set out in an Agreement, the Parties intend that a person who is not a Party to an Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of an Agreement.

18. Notices

Any notice given under an Agreement by either Party to the other must be in writing and must be delivered either personally, by recorded delivery post or first class post, or in cases where time is of the essence by email- where that

email is acknowledged by return by the relevant particular individual as per the below. In the case of post such notice will be deemed to have been given 2 Working Days after the date of posting. Notices will be delivered or sent to the addresses of the Parties on the PO or to any replacement address notified in writing by either Party. Each Party may specify by notice in writing to the other a particular individual or office holder to whom any notices served on it are to be addressed in which event a notice will not be validly given unless so addressed.

19. Documentation

Supplier shall provide Circle Agency with all information required in order to enable Circle Agency to understand and operate the Goods or Software (including, but not limited to installation, commissioning, operation and maintenance). Circle Agency shall have the right to copy, reproduce and generally use the Documentation for Circle Agency's business purposes and the implementation and operation of the Goods and Software. The right to copy, reproduce and use the Documentation shall also extend to the Circle Agency third party suppliers provided that such use is required for the purposes of providing services to Circle Agency or Circle Agency's clients/customers.

20. Security

20.1 Supplier shall ensure that Supplier Personnel conform to all security, safety and works regulations and such other local instructions, as may be notified by whilst on any Circle Agency Premises or our client/customer premises. Circle Agency may (a) remove from and refuse entry and re-admission to any Circle Agency Premises, any person who is, in the reasonable opinion of Circle Agency, conforming with these requirements or is otherwise not a fit person to be allowed on premises; and/or (b) search any Supplier Personnel, their vehicles, or Goods upon any Circle Agency Premises or those where we are carrying out a contract for our client/customer, upon entry to and departure from any of those premises.

20.2 Supplier shall use its best endeavours to ensure that Supplier Personnel are aware of and comply with these requirements and that no Supplier Personnel unwilling to comply will be employed on any Circle Agency Premises or contracts.

21. Audit

20.1 Supplier shall, subject to agreeing confidentiality terms substantially similar to those in an Agreement, permit Circle Agency (and its agents) to inspect, review, verify and take copies of any associated records and documentation in the control or possession of Supplier relating to the provision of the Deliverables for the purpose of auditing the work provided for under an Agreement.

20.2 If an audit reveals that there has been any overpayment of the Charges, the amount of the overpayment shall be reimbursed (including interest accrued at rate set out in Clause 7) by the Supplier within 30 days of receipt of Circle Agency invoice for such sum. This is without prejudice to Circle Agency's other rights in relation to such breach.

22. Employment Liabilities

If at any time during the course of an Agreement or following the termination or expiry of an Agreement it is found or alleged that any Supplier Personnel is or has become an employee of Circle Agency or a Future Supplier pursuant to TUPE or otherwise then Supplier shall indemnify Circle Agency (for itself and as trustee for any Future Supplier) and keep it indemnified in full against any and all Employment Liabilities arising out of or in connection with any claim or demand by such Supplier Personnel or any trade union, staff association, worker's committee or any other worker representative who represents or purports to represent any or all of the Supplier Personnel.

23. Set-Off

22.1 Each Party shall be entitled to set off any liability owed to it by the other Party against any liability it may owe to such other Party.

24. Announcements and Publicity

24.1 Supplier shall not make any announcement relating to an Agreement or its subject matter without the prior written approval of Circle Agency except as required by law or regulatory authority. This includes; but is not limited to, the use of the Circle Agency marks (logos) or any client/customer marks (logos, photographs of deliverables, etc.), in reference to our working together.

25. Governing Law and Jurisdiction

Each Agreement and any issues or disputes arising out of or in connection with it (whether such disputes are contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise) shall be governed by and interpreted in accordance with English Law and the Parties submit to the exclusive jurisdiction of the English Courts provided that Circle Agency may apply to any court of competent jurisdiction to defend its IPRs.

26. Compliance with Laws, Data Protection and Information Retention

26.1 In performing its obligations under an Agreement, Supplier shall comply with all applicable laws, rules and regulations of governmental entities, having jurisdiction over such performance, including any health and safety legislation and environmental legislation.

26.2 For the purposes of an Agreement, both parties may receive Personal Data. Where the parties receive Personal Data as Data Controllers each party agrees to comply with the Data Protection Act 1998 and any future amendments. Where the parties receive Personal Data as Data Processors, the parties agree to act solely on the instructions of the party sending the Personal Data in relation to the processing of that Personal Data and will at all times ensure that the necessary technical and organisational measures are in place to prevent unauthorised and unlawful processing or disclosure of such Personal Data. Where the receiving party acts as Data Processor it will not transfer the Personal Data outside of the European Economic Area (as such term is commonly understood) or to any third party without the other parties written consent.

26.3 Where applicable the Supplier shall comply with all payment card scheme rules and regulations and required certifications as such rules and regulations apply to the provision of the Services, including but not limited to the most recent version of the Payment Card Industry Data Security Standard as promulgated by the PCI Security Standards Council as updated from time to time ("PCI DSS"). Circle Agency may request Supplier to provide written proof of such compliance which Supplier shall provide within one (1) month of Circle Agency's request. The Supplier shall perform annual reviews of their card holder environments in accordance to the PCI DSS requirements, reporting to Circle Agency any identified vulnerability or non-compliance as per the PCI DSS standard.

26.4 The Supplier shall comply with Circle Agency's Information Retention Policy (as amended from time to time) and will notify Circle Agency of any law in the jurisdiction (s) in which the Supplier operates which would prevent the Supplier from complying with Circle Agency's Information Retention Policy.

26.5 The Supplier shall maintain and keep up to date a list detailing the location of all Circle Agency data (including Personal Data) together with details of any third party sub-contractors or third parties with whom the Supplier has shared any Circle Agency data.

26.6 In addition to and without prejudice to clause 26.1, the Supplier and Circle Agency each agree and undertake to the other that in connection with an Agreement and the transactions contemplated by an Agreement, they will each respectively comply with all applicable laws, rules, regulations of the United Kingdom relating to anti-bribery and anti-money laundering.

26.7 In the event that Circle Agency has any basis for a good faith belief that the Supplier may not be in compliance with the undertakings and/or requirements set out in clause 26.6, Circle Agency shall advise the Supplier in writing of its good faith belief and the Supplier shall cooperate fully with any and all enquiries undertaken by or on behalf of Circle Agency in connection therewith, including by making available the Supplier's relevant personnel and supporting documents if reasonably deemed necessary by Circle Agency.

26.8 Any breach by the Supplier of clauses 26.6 and 26.7 shall be deemed to be a material breach of this Agreement for the purposes of clause 8.1.

27. Confidentiality

27.1 Each Party shall ensure that disclosure of the Confidential Information is restricted to those employees, directors or contractors, and/or members of its Group who need access to the Confidential Information for the purposes of an Agreement. Copies or reproductions of the Confidential Information shall not be permitted except to the extent reasonably necessary for the purposes of such Agreement and all copies made shall remain the property of the disclosing party.

27.2 In this clause "Confidential Information" shall mean product, business, market, strategic or other information or data (including but not limited to information retained on all types of medium including written, diagrammatical,

software or other storage medium) relating to an Agreement or the business or affairs of the Party disclosed whether in writing, orally or by any other means, and whether or not that information is marked “confidential” excluding any information which: (a) at the time of receipt by the recipient is in the public domain, or subsequently comes into the public domain through no fault of the recipient or its personnel; (b) is lawfully received by the recipient from a third party on an unrestricted basis; (c) is already known to the recipient before receipt under an Agreement; (d) is required by law, regulation or order of a competent authority to be disclosed by the recipient provided that the disclosing party is given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same; or (e) is disclosed by the recipient with the prior written approval of the other Party in accordance with the terms of such written approval.

27.3 Each Party shall maintain Confidential Information in confidence and shall exercise in relation to the Confidential Information no lesser security measures and degree of care than those which it applies to its own confidential information, which each Party warrants as providing the protection required by these

28. Insurance

28.1 Supplier shall have in force and shall maintain a policy of Professional indemnity insurance in respect of its liabilities under an Agreement with a limit of indemnity not less than £1,000,000 or the value of their agreement with Circle Agency, for any one claim arising out of any one incident or event and without limit as to the number of claims during the period of insurance.

28.2 Supplier shall have in force and shall maintain a policy of public and product liability insurance in respect of its liabilities under an Agreement with a limit of indemnity not less than £5,000,000, for any one claim arising out of any one incident or event and without limit as to the number of claims during the period of insurance.

28.3 Supplier shall have in force and shall maintain a policy of employee liability insurance in respect of its liabilities under an Agreement with a limit of indemnity not less than £5,000,000, for any one claim arising out of any one incident or event and without limit as to the number of claims during the period of insurance

29 Intellectual Property (IPR)

29.1 All IPRs in information supplied to the Supplier by Circle Agency and/or its sub contractor(s) for the purposes of the Supplier performing its obligations under the Agreement vests in and remains with Circle Agency.

29.2 The Supplier warrants that all Supplier IPRs vest in and remain with the Supplier and/or its sub-contractor(s) as the case may be and Supplier warrants that:

- (a) it has the right to use and/or exploit such Supplier IPRs; and
- (b) that the Supplier IPR's do not infringe the rights of any third party.

29.3 Unless otherwise set out in a PO, side letter or other schedule that is expressly agreed between the Parties and which is expressed to form part of an Agreement, Supplier hereby grants to Circle Agency an irrevocable, non-exclusive, perpetual licence to use, copy, install, maintain, modify, enhance and adapt the Supplier IPR and to allow members of the Circle Agency Group to do the same. Circle Agency may also assign its licence to use the Supplier IPR (or any part thereof) to any third party to which it may outsource the operation of a part of Circle Agency's operations or business provided such third party's use, copying, installation, maintenance, modification, enhancement and adaptation is solely for the purpose of providing a service to Circle Agency.

29.4 In respect of Bespoke IPR, the Parties shall clearly identify in writing which of the IPRs ownership options set out in clause 29.5 shall apply. If the Parties fail to enter into discussions or to reach agreement in relation to the ownership of such Bespoke IPR, clause 29.5(a) shall apply.

29.5 The options for ownership of Bespoke IPR shall be as follows:

- (a) Circle Agency exclusively owns the Bespoke IPR (in which case Supplier agrees to take all such actions and to execute all such documents, including but not limited to an assignment of all future rights in and to the Bespoke IPR, as may be necessary to enable Circle Agency to obtain, defend or enforce its rights to use the Bespoke IPR, and shall not do or fail to do any act which would or might prejudice Circle Agency's rights).

(b) Supplier exclusively owns the Bespoke IPR (in which case Supplier hereby grants to Circle Agency an irrevocable, non-exclusive, perpetual licence to use, copy, install, maintain, modify, enhance and adapt the Bespoke IPR and to allow members of the Circle Agency Group to do the same).

(c) The Bespoke IPR is owned jointly by both Parties. In this case each party grants the other party a royalty free, irrevocable, perpetual and transferable licence to use the Bespoke IPR.

30 Survivals of Provisions

Clauses 8, 10, 11, 12, 13, 14, 17, 21, 22, 24, 25, 27, 29, 30 and paragraph 3 of Schedule 3 of an Agreement shall survive termination of that Agreement, for whatever reason.

31 Counterparts

An Agreement may be executed in any number of counterparts by the Parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

SCHEDULE 1- Additional Terms relating to the Supply of Goods

1. Right to Inspect

Supplier shall, at Circle Agency's request, allow Circle Agency to inspect and test the Goods prior to despatch to the Circle Agency Premises. If as a result of any inspection or testing Circle Agency is not satisfied that the Goods will comply in all material respects with an Agreement, and Circle Agency so informs Supplier within 7 days of such inspection or testing, Circle Agency shall not be deemed to have accepted such Goods, and Circle Agency shall not be obliged to pay any relevant Charges until the non-compliance is remedied. No such inspection shall diminish or otherwise affect Supplier's obligations.

2. Delivery and Acceptance

2.1 Supplier shall, at its own expense, deliver the Goods during a Working Day (or as indicated in the agreement by both parties), properly packed and secured to the place specified in the PO or such other location as may subsequently be advised in writing by Circle Agency to Supplier. All Goods shall be delivered by the relevant completion dates, and time shall be of the essence in relation to delivery of the Goods.

2.2 Supplier shall supply Circle Agency in good time with any instruction or other information required to enable Circle Agency to take delivery of the Goods.

2.3 Circle Agency shall accept Goods immediately after Supplier has demonstrated to Circle Agency's satisfaction that the Goods (i) comply with the PO pursuant to which they are supplied; (ii) comply with the relevant Agreement; and (iii) are in accordance with the Specification, and "Acceptance" shall be construed accordingly for the purposes of this Schedule 1.

2.4 Circle Agency may reject any Goods delivered earlier or later than the relevant Completion Date, unless previously agreed in writing by the Parties provided that Circle Agency shall use its reasonable endeavours to accommodate deliveries effected prior to the relevant Completion Date.

2.5 If the Goods (or any parts of them) are not delivered by the relevant Completion Date, Circle Agency may terminate in whole or in part the relevant Agreement without cost or liability. Where Circle Agency exercises this option: (a) Supplier shall refund to Circle Agency in full any payments made by Circle Agency to Supplier in respect of such Goods; (b) no further payment will be due from Circle Agency in respect of such Goods; (c) following receipt of payment in full of all monies due to it in relation to the Goods in respect of which an Agreement has been terminated (whether in whole or in part) Circle Agency shall make such Goods available for collection by Supplier and Supplier shall collect such Goods at its own expense within 5 Working Days of the payment, and if Supplier fails to collect within this period, Circle Agency may dispose of such Goods at its absolute discretion without notice or liability to Supplier; (d) title in the Goods will revert to Supplier following receipt by Circle Agency from Supplier of payment in full of the refund due to Circle Agency; and (e) risk in the Goods shall revert immediately to Supplier.

2.6 Supplier undertakes at its own expense to repair or replace (at the option of Circle Agency) Goods lost or damaged in transit, and Acceptance will not be deemed to have taken place until replacement or repaired items have been delivered to the satisfaction of Circle Agency.

3. Risk and Title

Without prejudice to Circle Agency other rights under an Agreement: (a) title in the Goods shall pass to Circle Agency on payment for the relevant Goods, and (b) risk in the Goods shall pass to Circle Agency on Acceptance save where the Agreement includes installation, in which case risk shall not pass to Circle Agency until completion of the installation work.

4. Warranties

4.1 Supplier shall provide Circle Agency with the benefit of any Manufacturer's warranties in respect of the Goods and additionally Supplier warrants to Circle Agency as follows: (a) Supplier holds absolute legal and beneficial title in and to the Goods and has the unfettered right to sell and supply them and to pass good unencumbered title to Circle Agency, (b) the Goods are manufactured, supplied and installed in accordance with Circle Agency Policies, new and unused, of satisfactory quality and conform in all respects to their description and with the Specification, (c) the Goods will be free from Defects whether actual or latent and whether in design, material or workmanship (d) the Goods will comply in all material respects with all relevant statutory requirements and standards issued from time to time by the International Organisation for Standards (ISO), ITU-T and any other applicable organisation or recognised standards body, (e) the Documentation provided by Supplier in respect of the Goods are or will be of such a standard as to enable suitably trained personnel of Circle Agency to understand, operate and maintain the Goods to a level of competence sufficient for Circle Agency's business purposes and (f) where Supplier modifies the Goods or any part of the Goods for Circle Agency, such modification will not materially reduce the functionality of the Goods save to the extent that may be agreed by Circle Agency in writing prior to Supplier carrying out such modification. The Goods shall conform with each Warranty for 12 months from the date of Acceptance (the "Warranty Period").

4.2 If any of the Goods are in breach of any Warranty during the Warranty Period, Supplier will (at Circle Agency's option and without prejudice to its other rights or remedies): (a) repair the Goods promptly at Circle Agency's premises (and where that is not possible repair the Goods and redeliver to Circle Agency) or (b) replace the Goods promptly with Goods that conform with the Warranties. This shall be at no cost to Circle Agency. If Supplier fails to repair or replace any Goods within a reasonable period determined by Circle Agency, Circle Agency may either itself or through a third party, repair or replace the Goods and set off the cost of doing so against any sum Circle Agency owes or will owe to Supplier and recover any further amount outstanding from Supplier as a debt. Circle Agency's rights and remedies are in addition and without prejudice to its other rights and remedies at law.

4.3 Save as expressly provided to the contrary, each of the Warranties is, and shall be construed as, separate and distinct from the other Warranties. Accordingly, a Warranty shall not be limited or restricted by reference to, or inference from, the terms of any other Warranty or any other term of an Agreement.

4.4 The Warranties apply equally to any Goods repaired or replaced in which case the Warranty Period shall be the longer of the remainder of the original Warranty Period or 6 months from the date of receipt of the repaired or replaced Goods by Circle Agency.

4.5 Circle Agency rights under an Agreement are in addition to the statutory conditions (if any) implied in favour of Circle Agency by the Sale of Goods Act 1979, Supply of Goods and Services Act 1982, and any successor or equivalent legislation.

SCHEDULE 2- Additional Terms relating to the Provision of Services

1. General

Supplier shall provide the Services during Working Day(s) (unless otherwise agreed with Circle Agency) at the place specified in the PO or such other location as may subsequently be advised in writing by Circle Agency to Supplier. All Services shall be delivered by the relevant Completion Dates, and time shall be of the essence. If the Services (or any parts of them) are not provided by the relevant Completion Date, Circle Agency may terminate in whole or in part the relevant Agreement without cost or liability. Where Circle Agency exercises this option: (a) Supplier shall refund to Circle Agency in full all payments made by Circle Agency to Supplier in respect of any Services; (b) no further payment will be due from Circle Agency in respect of any Services; and (c) a full refund shall be due to Circle Agency in respect of any payments already made. Where Supplier is in possession of Circle Agency's property in pursuance of providing the Services, it shall at its own expense repair or replace (at the option of Circle Agency) any such property that is lost or damaged while in Supplier's possession to the satisfaction of Circle Agency.

Circle Agency shall accept Services immediately after Supplier has demonstrated to Circle Agency's satisfaction that the Services (i) comply with the PO pursuant to which they are supplied; (ii) comply with the relevant Agreement; and (iii) are in accordance with the Specification, and "Acceptance" shall be construed accordingly for the purposes of this Schedule 2.

2. Warranties

2.1 Supplier warrants to Circle Agency: (a) that it will ensure that Supplier Personnel will use the skill, care and diligence as would be expected from a skilled and experienced supplier engaged in the same type of business as Supplier and will be performed by employees, authorised agents and sub-contractors possessing the appropriate accreditations, skills and experience for all tasks assigned to them; (b) that Supplier Personnel will carry out the Services in such a way as (i) not to cause any material fault or malfunction in the Deliverables (ii) not to cause any material interruption to Circle Agency's business (other than any agreed downtime and unavoidable interruption which is required in order to perform the Services in a proper and efficient manner) (iii) to comply in all material respects with Circle Agency Policies (iv) to work in a co-operative manner with Circle Agency and Circle Agency's suppliers (where the provision of the Services interact with services of such other suppliers) and ensure the effective performance of the Services; (c) that the Services will conform in all material respects to the relevant Specification and will comply in all material respects at the time the relevant Service is performed with all statutory requirements or regulations or any other standards relating to the Services and their supply, that have been issued by any recognised and appropriate standards bodies; and (d) that any Deliverables produced by Supplier in the course of performing Services shall comply with the applicable Warranties set out elsewhere in these Circle Agency PTs. The Services shall conform with each of the Warranties for 12 months from the date of their Acceptance (the "Warranty Period").

2.2 If any of the Services performed are found to be in breach of any Warranty during the Warranty Period, Supplier will (without prejudice to its other rights or remedies) re-perform the Services promptly at Circle Agency's premises. This shall be at no cost to Circle Agency. If Supplier fails to re-perform the Services within a reasonable period determined by Circle Agency, Circle Agency may either itself or through a third party, re-perform the Services and set off the cost of doing so against any sum Circle Agency owes or will owe to Supplier and recover any further amount outstanding from Supplier as a debt. Circle Agency's rights and remedies are in addition and without prejudice to its other rights and remedies at law.

2.3 Save as expressly provided to the contrary, each of the Warranties is, and shall be construed as, separate and distinct from the other Warranties. Accordingly, a Warranty shall not be limited or restricted by reference to, or inference from, the terms of any other Warranty or any other term of an Agreement.

2.4 The Warranties apply equally to Services re-performed, in which case the Warranty Period shall be the longer of the remainder of the original Warranty Period or 6 months from the date of re-performance.

SCHEDULE 3- Software Licence Terms

1. Delivery and Acceptance

Supplier shall deliver the Software to Circle Agency and (where appropriate, if not pre-installed by Supplier or installed by Circle Agency) install the same at Circle Agency's Premises in accordance with the relevant PO, Agreement and the Specification. Supplier shall, in accordance with an acceptance plan mutually agreed between the Parties, conduct acceptance tests in respect of the Software at Circle Agency's Premises during a 14 calendar day acceptance period (or such other acceptance period as the Parties may agree in writing), such acceptance period to commence once the Software is operational. Circle Agency shall accept the Software immediately after Supplier has demonstrated to Circle Agency's satisfaction that the relevant Software (i) complies with the PO pursuant to which it is supplied; (ii) complies with the relevant Agreement; and (iii) is in accordance with the Specification, and "Acceptance" shall be construed accordingly for the purposes of this Schedule 3. Upon Acceptance, Circle Agency shall, if requested by Supplier, sign Supplier's acceptance certificate acknowledging Acceptance of the relevant Software by Circle Agency.

2. Risk and Title

Risk in and title to the Media shall pass to Circle Agency on the date of Acceptance. If any part of the Media shall thereafter be lost, destroyed or damaged by Circle Agency, Supplier shall at the request of Circle Agency replace the

same promptly subject to Circle Agency paying the reasonable costs associated with such replacement. Supplier shall at all times retain ownership of the Software.

3. Licence

3.1 Supplier hereby grants to Circle Agency an irrevocable, non-exclusive, perpetual licence to use, copy, install, maintain, modify, enhance and adapt the Software throughout the world and to allow members of the Circle Agency Group to do the same. Circle Agency may also assign its licence to use the Software (or any part thereof) to any third party to which it may outsource the operation of a part of Circle Agency's operations or business provided such third party enters into a direct undertaking to respect the terms of this Schedule 3 with Supplier. The grant of rights in this paragraph 3 shall also include implementation (in accordance with the reasonable written instructions of Circle Agency) of new releases, versions and upgrades to the Software.

4. Warranties

4.1 Supplier shall provide Circle Agency with the benefit of any Manufacturer's warranties in respect of the Software (if any) and additionally Supplier warrants to Circle Agency as follows: (a) Supplier's title to and property in and to the Software is free and unencumbered, and Supplier has the right, power and authority to licence the same to Circle Agency; (b) the Software conforms in all material respects to their descriptions (if any) and with the Specification; (c) the Software will be free from Defects which materially affect the performance or functionality of the Software; (d) the Software will comply in all material respects with all relevant statutory requirements and any relevant industry standards issued by any applicable organisation or recognised standards body; (e) the Software will be supplied free of any known computer code programming instruction or set of instructions that damages, interferes with, or otherwise adversely affects computer program data files, or hardware, without the consent of the computer user, including self-propagating program instructions (all commonly called "Viruses") and when providing Services, Supplier will not knowingly introduce any Viruses to any of Circle Agency's computer systems; (f) any new software releases, versions or upgrades supplied to Circle Agency under an Agreement will include any data conversion software required to enable Circle Agency to continue reading and writing data using the Software in the same manner as previous software releases, versions or upgrades; (g) new releases, versions and upgrades shall not cause a material diminution in the functionality or the performance of the Software; (h) neither the performance nor functionality of the Software will be adversely affected by dates, and all relevant years will be recognised as leap years; and (i) the Software is capable of performing its functions for more than one currency and also for the Euro, and will comply with all legal requirements applicable to the Euro.

4.2 The Software shall conform to each of the Warranties set out in paragraph 4.1 from Acceptance for the longer of 12 months or the period of any standard warranty as applies to any Software supplied by Supplier ("Warranty Period"). The Warranties in paragraph 4.1 shall not apply to the extent that Circle Agency makes or causes to be made to the defective Software any modifications in breach of this licence or if Software has been altered, repaired, installed or relocated by any party other than Supplier or Supplier's agents unless such alteration, repair, installation or relocation shall have been performed in accordance with Supplier's standards therefore.

4.3 If any Software is in breach of any Warranty during the Warranty Period, Supplier shall, at Circle Agency's option and at Supplier's own expense: (a) carry out all such alterations or corrections as are necessary to cause the Software or Media to comply fully with this Schedule 3 by repairing or replacing it; or (b) refund to Circle Agency any and all Charges paid by Circle Agency for the Software. If Supplier fails to repair or replace the Software within a reasonable period determined by Circle Agency, Circle Agency may do so either itself or through a third party and set off the cost of doing so against any sum Circle Agency owes or will owe to Supplier and recover any further amount outstanding from Supplier as a debt. Circle Agency's rights and remedies are in addition and without prejudice to its other rights and remedies at law.

4.4 Save as expressly provided to the contrary, each of the Warranties is, and shall be construed as, separate and distinct from the other Warranties. Accordingly, a Warranty shall not be limited or restricted by reference to, or inference from, the terms of any other Warranty or any other term of an Agreement.

4.5 The Warranties apply equally to Software and Media which have been repaired or replaced, in which case the Warranty Period shall be the longer of the remainder of the original Warranty Period or 6 months from the date of repair or replacement.

5. Training and Maintaining Services

Supplier shall provide such training in respect of the Software as is necessary to allow Circle Agency to use it. At Circle Agency's request, Supplier shall provide such Software maintenance services as Circle Agency may require and in the event of such a request by Circle Agency, the parties shall (acting reasonably) negotiate in good faith to agree Charges in respect of the same

For more information, please contact:

THE CIRCLE AGENCY

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