



Document Classification: **COMMERCIAL**

# General Conditions

14 January 2021





## GENERAL CONDITIONS

### 1. Interpretation and Definitions

#### 1.1. In the Agreement, the following definitions apply

**“Access Requests”** requests made by a data subject to exercise any rights of data subjects under the DP Laws;

**“Additional Services”** means such additional services that Customer requests from Taylor Made within the scope of the MSS but which are not included in the Delivery Agreement and which Taylor Made is willing and able to provide;

**“Agreed Specification(s)”** means for

a) Products, the product descriptions published by Product Vendor at the Date of Delivery of the Delivery Agreement, provided that the functionality described in such product descriptions can be obtained without any configuration or other work to be carried out by Taylor Made;

b) Resource Services, the agreed Consultant Level;

c) Project Services, the SOW;

d) Support Services, the Service Description as set out in the Delivery Agreement; and

e) MSS, the Service Description as set out in the Delivery Agreement;

**“Agreement”** means the Delivery Agreement entered into by the Parties, and these General Terms and Conditions.

**“Appropriate Safeguards”** such legally recognised mechanism(s) for transfers of Personal Data as may be permitted under the DP Laws from time to time;

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

**“Business Hours”** 08:00 – 18:00 hrs on any Business Day;

**“Change Control”** a request for a change by either the Customer or Taylor Made to amend, remove or add to the relevant Service Agreement;

**“Charges”** the charges set out in clause 11 or as otherwise specified in the relevant Agreement payable by a Customer for the supply of Equipment and/or Services by Taylor Made;

**“Commencement Date”** is, unless specifically defined on the Order Form, the date that the last signatory signs the Agreement;

**“Controller”** has the meaning given to that term (or the term ‘data controller’) in the DP Laws.

**“Confidential Information”** any information, (whether verbal or in writing or on magnetic or any other media) relating to the other party’s marketing or business development, business operations, business affairs, products, processes, technology, Intellectual Property Rights, Inventions, trade secrets, suppliers and customers associations, transactions, financial arrangements or in relation to any activities of either party or any person, firm, customer or company with whom either party has any dealings and which is made available to either party under or in connection with the Agreement which is marked as such or which should by its nature be reasonably understood to be confidential by the other party.

**“Contract Year”** the period of 12 months commencing on the Commencement Date, and each successive period of 12 months during the continuance in force of the Agreement, or, in respect of the final Contract Year, the period from the end of the penultimate Contract Year to the date of termination of the Agreement, if shorter;

**“Customer Obligations”** the specific Customer obligations set out in the relevant Service Conditions;

**“Customer Data”** means any data or software provided by the Customer in connection with the Services belonging to the Customer or the Customer’s clients or otherwise made available to Taylor Made for use in undertaking the Services;

**“Customer Equipment”** the Customer’s owned IT hardware and software utilised as part of the Services;

**“Customer Materials”** all materials, equipment and tools, drawings, specifications and data supplied by a Customer to Taylor Made including any such materials, equipment and tools, drawings, specifications and data that relates to the clients of the Customer;

**“Customer Premises”** any premises occupied by the Customer at which the Customer shall receive the Services;

**“Data Breach”** any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Personal Data.

**“Date of Delivery”** means the date of delivery when the Services or Deliverables or a well-defined part thereof or a phase of the implementation of the Project or Services or solution are provided to the Customer as follows for:

a) Hardware, the date when the Hardware has been delivered at the Delivery Site in accordance with the agreed Incoterms 2010;

b) Software and certificate of Product Vendor support, the date when the Software or certificate of Product Vendor support is made available to Customer electronically through download or otherwise;

c) Product Vendor professional services or Product Vendor support, the date when such service is made available for use by, or is provided to, Customer;

d) MSS and/or Support Services, the first date when MSS and/or Support Services according to Agreed Specifications, are available for use by Customer;

e) Resource Services, the first date when Consultant is present at the agreed location (onsite or remote) to start the delivery of the Resource Services; or

f) Project Services, (i) when a successful Acceptance Test has been performed and an Acceptance Certificate has been issued by Customer; (ii) when the Acceptance Control Period specified in the Delivery Agreement expires and Customer has not made a justified complaint in respect of the Deliverables; (iii) for any delivery of corrections or otherwise any Deliverable made after Customer has made a justified complaint, when an Acceptance Certificate has been signed by Customer; (iv) if the Customer starts using the Deliverables in the ordinary course of business or for revenue earning purposes, such being considered as beneficial use; or (v) if no Acceptance Control Period has been agreed in the Delivery Agreement, when Taylor Made informs Customer in writing that the delivery has been completed;

**“Deliverables”** means all deliverables and results specified in the Delivery Agreement(s) to be delivered to Customer. For the avoidance of doubt any and all tangible and intangible property including, but not limited to, technical documents, samples, models and other materials as well as all data, standard concepts, tools, know-how and information of whatever nature developed by Taylor Made prior to the commencement of the Services or independently developed by or on behalf of Taylor Made during or upon completion of the performance of Services, including any Intellectual

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Property Rights, shall not be considered Deliverables unless specified otherwise in the Delivery Agreement;

**“Delivery Agreement”** means a specific agreement including all appendices thereto and/or Purchase Order entered into between Taylor Made and Customer governing Supplier’s provision and Customer’s procurement of Products and/or Services;

**“DP Laws”** any applicable data protection laws relating to the protection of individuals with regards to the processing of personal data including the General Data Protection Regulation (EU) 2016/679 (**“GDPR”**) (together with any laws implemented by EU member states (including any replacement legislation applicable in the United Kingdom, whether or not as a result of Brexit), which contain derogations from, or exemptions or authorisations for the purposes of, the GDPR, or which are otherwise intended to supplement the GDPR); and the UK Data Protection Act 2018;

**“Effective Date”** being the date the services Go Live;

**“Equipment”** any goods or equipment to be provided by Taylor Made to the Customer, or purchased by Taylor Made on behalf of the Customer, (including without limitation any part or parts of it) pursuant to the Agreement;

**“End User License Agreement”** the software licence agreement provided by the licensor establishing the User’s rights to use the Software;

**“Exit Plan”** any exit plan set out in the relevant Service Conditions to be followed by both Parties to ensure the smooth transfer of the Services to a third party supplier specified by the Customer at the expiry or termination of the Agreement;

**“Go Live”** the date the individual Services in the relevant Order Form is activated.

**“Intellectual Property Rights” or “IPR”** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**“Loan Equipment”** means any IT Hardware owned by Taylor Made and loaned to the Customer for the purposes of short term resolution of Customer support services for a pre-agreed fee;

**“Managed (Security) Services” or “MSS”** means a subscription service consisting of either assessment, operations, detection and/or response services as specified and agreed in the Delivery Agreement;

**“Party”** means each of Customer and Taylor Made and **“Parties”** means Customer and Taylor Made jointly;

**“Personal Data”** personal data (as defined in the DP Laws) received from or on behalf of the Customer or about the personnel of the Customer in connection with the performance of Taylor Made’s obligations under this agreement (including any personal data forming part of the Customer Data);

**“Processor”** has the meaning given to that term (or the term ‘data processor’) in the DP Laws;

**“Product Vendor”** means a company that develops and produces hardware and/or software products, cloud/SaaS services, and supplies services related thereto. Product Vendor shall not be considered as a Subcontractor to Taylor Made and its personnel shall not be considered as working under the responsibility of the Taylor Made.

**“Products”** means goods sold by Taylor Made to the Customer pursuant to the Agreement;

**“Project Milestone”** a scheduled event by which the Services or a part of the Services shall be completed as specified in the Agreement;

**“Project Team”** the team of staff and sub-contractors of Taylor Made employed in providing the Services;

**“Purchase Order”** a Customer purchase order to purchase Services and/or Equipment;

**“Services”** the services, (including without limitation the delivery of any Deliverables, or the supply of any Equipment), to be provided by Taylor Made pursuant to an Agreement

**“Service Activation Project”** means a project which includes activities necessary to start the MSS. These projects shall be specified in a SOW and include instructions from Taylor Made to the Customer of any necessary amendments on the Customer platform(s), and/or installation of Taylor Made’s tools in Customer’s and/or Taylor Made’s IT environment. It also includes Taylor Made’s and Customer’s activities to enable Taylor Made’s to activate the MSS to the Customer;

**“Service Credits”** the predetermined compensation to be credited or paid to the Customer by Taylor Made for failure(s) to meet the contractual Service Levels as set out in the relevant Service Conditions (if any);

**“Service De-Activation Project”** means a project which includes activities necessary to end the MSS. These projects shall be specified in a SOW and include instructions from Taylor Made to the Customer of any necessary amendments on the Customer platform(s), and/or de-installation of Taylor Made’s tools in Customer’s and/or Taylor Made’s IT environment. It also includes Taylor Made’s and Customer’s activities to disable the MSS to the Customer;

**“Service Description”** means, with regard to Support Services and MSS, the description of the Services to be provided to Customer and which is appended to the Delivery Agreement;

**“Service Desk”** means Taylor Made’s Service Desk that manages the logging, prioritisation and resolution of all service incidents and requests reported by the Customer and/or by Taylor Made and/or as a result of automated monitoring by Taylor Made of the Customer’s environment and systems.

**“Service Levels”** the minimum service levels required by the Customer in relation to the provision of the Services by Taylor Made in relation to timeliness, quality and/or other applicable service measure(s) as set out in the relevant Service Conditions if applicable;

**“Set-up Services”** the required design, test and/or implementation services required to set up the Services as set out in the relevant Service Specification (if any);

**“Software”** means any third party software in use by the Customer, and installed on the Customers hardware which is covered under a Service Agreement;

**“Statement of Work” or “SOW”** means the description of the project-specific activities, Deliverables and the time schedule for Taylor Made’s provision of Project Services or Service Activation and De-Activation Projects which is appended to the Delivery Agreement.

**“Sub-Processor”** another Processor engaged by Taylor Made for carrying out processing activities in respect of Personal Data on behalf of the Customer;

**“Supplier Obligations”** the specific obligations of Taylor Made set out in the Agreement;

**“Special Conditions”** any conditions which are in additional to, or vary, the Services Conditions and which form part of the Agreement;

**“Term”** means the period of this Agreement;

**“Third Party Services”** any part of the Services which Taylor Made procures from a third party, including any equipment (to include Equipment) which Taylor Made procures from a third party and uses in order to provide the Services including but



not limited to software, hardware, data centre facilities and/or connectivity & networking;  
**“Third Party Services Provider”** the provider of any Third Party Services in connection with the Services;  
**“User”** a specific individual user of a Service.

**1.2.** The following definitions and rules of interpretation apply in the Agreement:

- 1.2.1. Clause, schedule and clause headings shall not affect the interpretation of the Agreement.
- 1.2.2. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's permitted assigns. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.2.3. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.2.4. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.2.5. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.2.6. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.2.7. A reference to writing or written includes by fax and by e-mail.
- 1.2.8. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.2.9. References to clauses are to the clauses of the document in which the reference appears, unless otherwise stated.
- 1.2.10. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. ORDER OF PRIORITY

**2.1.** If there is a conflict between any of the provisions of these General Conditions and any provisions of any Service Conditions (including any Special Conditions and Service Terms incorporated therein), the conflict will be resolved according to the following order of priority:

- 2.1.1. First: the Special Conditions set out in the Agreement;
- 2.1.2. Second: the relevant Service Conditions; and
- 2.1.3. Third: these General Conditions.

## 3. SERVICE CONTRACT PROCESS

**3.1.** These General Conditions govern the overall relationship of the parties in relation to any Services provided by Taylor Made and this clause sets out the procedure for the Customer to request the provision of Services from Taylor Made under separate Service Conditions.

**3.2.** As soon as reasonably practicable on receipt of a written request from the Customer or of acceptance of a quotation, Taylor Made shall:

- 3.2.1. either notify the Customer that it is not able to provide the requested Service; or
- 3.2.2. complete a draft Agreement which shall include the relevant Services Conditions and any Special Conditions for the Service and shall submit the draft Agreement to the Customer for its written approval.

**3.3.** An Agreement shall not enter into force, be legally binding or have any other effect unless the Agreement has been authorised by representatives of both parties to it.

**3.4.** For the avoidance of doubt, acceptance of a quotation by the Customer shall be deemed an ‘offer’ to procure Services and ‘acceptance’ by Taylor Made shall not take effect until an Agreement has been entered into by both parties.

**3.5.** On signature, each Agreement shall form a separate contract between its signatories; and shall incorporate the terms and conditions of these General Conditions and relevant Service Condition.

## 4. TERM OF SERVICE CONTRACT

**4.1.** Each Agreement shall come into force on the Commencement Date and shall continue, unless terminated earlier in accordance with the terms and conditions of these General Conditions, or where applicable in priority the terms set out in the Service Conditions (including any Special Conditions and Service Terms incorporated therein).

## 5. TAYLOR MADE’S SUPPLIER OBLIGATIONS

**5.1.** Taylor Made shall supply the Services in accordance with the Agreement.

**5.2.** Taylor Made shall provide the Services from the Commencement Date.

- 5.3.** Taylor Made shall use all reasonable endeavours to meet any performance dates specified in the Agreement, always provided that if no performance dates are so specified Taylor Made shall perform the Services within a reasonable time.
- 5.4.** In supplying the Services, Taylor Made shall use reasonable endeavours to:
- 5.4.1. provide the Services (including any Set-Up Services) and to deliver the Deliverables to the Customer in accordance with the Agreement;
  - 5.4.2. meet the Project Milestones on the dates and times specified in the relevant Service Specification to the agreed acceptance criteria, but any such dates shall be estimates only and time for performance by Taylor Made shall not be of the essence of the Agreement;
  - 5.4.3. comply with any Service Levels set out in the relevant Service Conditions;
  - 5.4.4. comply with any Exit Plan set out in the relevant Service Conditions ;
  - 5.4.5. ensure that personnel in the Project Team are suitably skilled and experienced to perform tasks assigned to them, and are sufficient in number to ensure that Taylor Made's obligations are fulfilled;
  - 5.4.6. obtain, and maintain all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in the Agreement;
  - 5.4.7. observe all health and safety rules and regulations and any other reasonable security requirements and/or other relevant regulations that apply at any of the Customer's Premises and that have been communicated to it, provided that it shall not be liable if, as a result of such compliance, it is in breach of any of its obligations under the Agreement;
  - 5.4.8. at the Customer's additional cost comply with the reasonable regulatory requests for information or audit inspection emanating from the Customer's regulatory bodies;
  - 5.4.9. at the Customer's additional cost liaise with and provide reasonable assistance in relation to the Services to any nominated third parties as reasonably requested by the Customer;
  - 5.4.10. use reasonable endeavours to ensure that the Services are operated in accordance with recognised best industry practice.

## 6. **MANAGED SECURITY SERVICES ("MSS")**

What is stated in this section 6 shall apply for Customer's subscription to and Taylor Made's provision of MSS.

**6.1.** Taylor Made shall in all material aspects provide the MSS in accordance with the Agreed Specifications and the Delivery Agreement starting on the estimated Date of Delivery and such service shall end at the last date of the subscription period of the MSS.

**6.2.** Unless otherwise agreed in the Delivery Agreement, Taylor Made shall be entitled to remuneration for the Service Activation and De-Activation Project (described further in section 6.3 to 6.6). If such remuneration is not agreed upon in the Delivery Agreement, Taylor Made has the right to charge for such services on a Time and Material basis based on the rates of its then-current Taylor Made's Project Engineer pricelist.

### **Service Activation Project**

**6.3.** Unless otherwise agreed in the Delivery Agreement, Taylor Made shall carry out a Service Activation Project for the purpose of activating the agreed MSS. Such Service Activation Project shall be agreed upon in a Statement of Works ("SOW").

**6.4.** Once the Service Activation Project has been completed, Taylor Made shall inform Customer in writing whether the MSS:

6.4.1. can be provided in accordance with the Delivery Agreement, in which case such notification will also be a confirmation of the Date of Delivery;

6.4.2. can be provided, subject to certain conditions being met in relation to Customer's IT infrastructure, in which case the Parties shall meet in order to discuss such conditions and their implementation and any impact on the estimated Date of Delivery;

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- 6.4.3. cannot be provided, (i) due to the customer preventing the Service Activation Project completing in a timely manner, in which case the corresponding Delivery Agreement shall terminate with immediate effect and without any right for Customer to claim compensation or damages. Taylor Made shall however always be entitled to remuneration for the Service Activation Project, whether or not the MSS requested by the Customer can be delivered as initially intended (ii) in the event Taylor Made prevents the Service Activation Project completing, therefore the project is terminated, in which case the corresponding Delivery Agreement shall terminate with immediate effect and without any right for Customer to claim compensation or damages and the customer will not be liable for any ongoing costs relating to this service.

**Service De-Activation Project**

- 6.5.** Unless otherwise agreed in the Delivery Agreement, Taylor Made shall at the end of the subscription period carry out a Service De-Activation Project for the purpose of deactivating the agreed MSS. Such Service De-Activation Project shall be agreed upon in a SOW.
- 6.6.** Customer acknowledges and consents to the removal of and as the case may be, return to Taylor Made, the standard use cases, scripts, service appliances and, if applicable, Supportive Tools, platforms and other tools (all which are Taylor Made's or a third party's ownership and proprietary IPR) that has been implemented in the Customer IT environment/search heads will be removed by Taylor Made, during the Service De-activation Project.
- 6.7.** Taylor Made shall upon Customer's request return the customer data.

**Additional Services**

- 6.8.** During the term of the Agreement, Customer may request Taylor Made to perform Additional Services. Any service not specifically listed in the Service Description or a SOW shall be considered Additional Services.
- 6.9.** The provision of, and the charges to be paid by Customer for Additional Services will be determined in accordance with the change procedure set forth in section 16.

- 6.10.** The Parties acknowledge and agree that Additional Services to be performed by Taylor Made shall not be subject to the service levels unless specifically agreed in an amendment to the Delivery Agreement.

**Customer's obligations**

In addition to what is set forth in section 9 below, the following also applies for MSS.:

- 6.11.** Unless otherwise agreed in the Delivery Agreement, Customer shall in a timely manner:
- 6.11.1. allow Taylor Made to install Taylor Made's Service Delivery Appliance in accordance with Taylor Made's suggested design;
  - 6.11.2. review documentation and issue decisions in connection with the Service Activation Project;
  - 6.11.3. provide Taylor Made with correct and required information regarding Customer's IT conditions and circumstances;
  - 6.11.4. be responsible for faults and defects in Customer's IT environment (both hardware and software) and use reasonable endeavours to correct such faults and defects in Customer's IT environment;
  - 6.11.5. allocate sufficient resources and employees, who are qualified and competent for the purpose, to perform its obligations; and
  - 6.11.6. be responsible for the control and administration of access rights in relation to all users of Customer's IT environment and the customer data, including but not limited to giving Taylor Made access to such IT environment through the Customer's network.

**7. THIRD PARTY SERVICES**

- 7.1.** In relation to any Third Party Services which form part of the Agreement:
- 7.1.1. Taylor Made will use reasonable efforts to monitor and supervise the supply of such Third Party Services, but Taylor Made shall not otherwise be responsible for or liable for any malfunction, failure, non-operation, default or non-availability of such Third Party Services, save as expressly provided in the relevant Service Conditions;

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- 7.1.2. If the Third Party Services Provider changes the scope of any Third Party Services after the date of the Agreement or replaces the same with a new version, or ceases to supply the same or Taylor Made decides to replace the same due to poor performance or quality, Taylor Made shall without liability substitute for the Third Party Service an alternative service which shall as far as is reasonably possible provide substantially the same functionality;
- 7.1.3. Taylor Made may change, without liability, any Third Party Services Provider or Third Party Service at any time, even if this involves a temporary suspension in the Services.
- 7.1.4. Customer shall be solely responsible for the evaluation, selection, installation, implementation, compatibility, use and performance of and results obtained from any hardware, systems software, utility software, security software, telecommunication equipment or software, and applications software used, unless (and only to the extent) otherwise expressly agreed in the Agreement.
- 7.1.5. Taylor Made makes no independent representations or warranties with respect to products provided by third parties. Any third party warranties are the exclusive remedies of Customer with respect to such products.

**8. PERSONAL DATA PROTECTION**

- 8.1. In connection with the supply of Services and Deliverables, Taylor Made may from time to time process personal data. Such processing is performed only when necessary to fulfil Taylor Made's contractual obligations towards Customer, and upon request and according to the written instructions of Customer.
- 8.2. With respect to Taylor Made's processing of personal data in the frame of a Delivery Agreement the Parties shall conclude and enter into a Third Party Processing Agreement data processing agreement, in compliance with article 28 of the GDPR, regulating all aspects of the processing activities to be carried out by Taylor Made, as well as the specifications of the purpose of processing, the type of personal data, and the categories of data subjects, etc.

- 8.3. Taylor Made shall ensure that all technical and organizational measures are taken to protect the personal data in accordance with the requirements of the GDPR and the applicable national privacy authorities.

**9. EQUIPMENT Order**

- 9.1. Any quotation for Equipment is valid for a period of 14 days unless otherwise specified and Taylor Made may withdraw it at any time by notice to the Customer.
- 9.2. Taylor Made may deliver the Equipment by separate instalments. High value items will be invoiced on receipt by either Taylor Made or the Customer with each separate instalment (if applicable) invoiced and paid for in accordance with the provisions of the relevant Agreement.
- 9.3. No Order for Equipment which has been acknowledged by Taylor Made pursuant to the Agreement or otherwise, may be cancelled by the Customer, except with the written agreement of Taylor Made and provided that the Customer indemnifies Taylor Made in full against all direct loss (including without limitation loss of profit), costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by Taylor Made as a result of cancellation.
- 9.4. Taylor Made reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Equipment to Taylor Made that is due to;
- 9.4.1. any factor beyond the control of Taylor Made (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 9.4.2. any request by the Client to change the delivery date(s), quantities or types of Goods ordered, or the Goods specification; or
- 9.4.3. any delay caused by any instructions of the Customer in respect of the Equipment or failure of the Customer to give Taylor Made adequate or accurate information or instructions in respect of the Goods.

**Quantity and Description**

- 9.5. The quantity and description of the Equipment shall be as set out in an Agreement



- 9.6.** Any samples, descriptions or specifications for the Equipment issued by Taylor Made are for illustrative purposes only and they do not form part of the Agreement.
- 9.7.** Taylor Made shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee for the Equipment given by the manufacturer to Taylor Made.
- 9.8.** The Equipment shall remain the property of Taylor Made until all Charges relating thereto and all other sums which are or which become due to Taylor Made from the Customer pursuant to the Agreement have been paid in full.
- 9.9.** Notwithstanding clause 8.8, risk in the Equipment or other goods will pass to the Customer from the date of delivery to the Customer.

### Delivery

- 9.10.** Taylor Made shall use its reasonable endeavours to deliver the Equipment on the date or dates specified by the Customer in the Agreement but any such date(s) are approximate only. If no dates are so specified, delivery shall be within a reasonable time of date of the order pursuant to an Agreement.
- 9.11.** Time is not of the essence as to the delivery of the Equipment and Taylor Made is not in any circumstances liable for any delay in delivery outside its reasonable control unless specified otherwise in an Agreement.
- 9.12.** Delivery shall be made during Business Hours unless specified otherwise in an Agreement
- 9.13.** The Customer shall be responsible (at the Customer's cost) for preparing the delivery location for the delivery of the Equipment and for the provision of all necessary access and facilities reasonably required to deliver and installing the Equipment. If Taylor Made is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, Taylor Made may levy reasonable additional charges to recover its direct loss arising from this event.

## 10. CUSTOMER'S OBLIGATIONS

- 10.1.** The Customer shall:
- 10.1.1. co-operate with Taylor Made in all matters relating to the Services and appoint (and, as it thinks fit, replace) the Customer Contract Manager, who shall have the authority contractually to bind the Customer on matters relating to the Services;
- 10.1.2. provide, for Taylor Made, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer Premises and appropriate Customer Equipment, and such office accommodation, data and other facilities as may reasonably be requested by Taylor Made;
- 10.1.3. provide, in a timely manner, such information as Taylor Made may reasonably request and ensure that it is accurate in all material respects;
- 10.1.4. be responsible (at its own cost) for preparing and maintaining the relevant Customer Premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from any of its premises in accordance with all applicable laws, before and during the supply of the Services by Taylor Made at those Customer Premises;
- 10.1.5. inform Taylor Made of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer Premises;
- 10.1.6. inform Taylor Made of any Customer requirements that may necessitate specific data protection or data retention Services;
- 10.1.7. ensure that all Customer Equipment is in good working order and suitable for the purposes for which it is used, in relation to the Services, and conforms to all relevant United Kingdom standards or requirements;
- 10.1.8. make available suitable staff and operating time on any associated system(s) to enable tests to be carried out. For this purpose, if necessary, suitable staff must be made available at remote location(s). Where the equipment is located at the premises of a third party and/or remote location, the Customer shall secure the necessary access to the Equipment and or any Loan Equipment at such location(s) as required by Taylor Made.
- 10.1.9. use any Loan Equipment in accordance with its operating manuals and promptly and regularly carry out all operators maintenance routines as and where specified.
- 10.1.10. use in conjunction with any Loan Equipment such operating supplies and media as shall comply with the recommendations of the Loan Equipment manufacturer, Taylor Made or its approved agents.

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- 10.1.11. ensure any Loan Equipment is to be used or operated only by staff in the employ of or under the control of the Customer, such equipment to be used within manufacturers recommended guidelines.
- 10.1.12. where possible, permit only Taylor Made or its approved agents to adjust, repair or maintain any Loan Equipment save for the operator maintenance routines at clause 9.1.9 above. If the Customer requires third parties or internal staff to adjust, repair or maintain the Loan Equipment then all and any Taylor Made Services required to adjust, repair or maintain the Loan Equipment will be chargeable, including recurrences of previously resolved occurrences.
- 10.1.13. notify Taylor Made promptly of any faults or defects in the operation of any Loan Equipment.
- 10.1.14. consistently maintain the environmental conditions recommended by the manufacturer of any Loan Equipment, Taylor Made or its approved agents, and notify Taylor Made in writing immediately there is a change of control within the meaning of section 1124 of the Corporation Tax Act 2010.
- 10.1.16. if Taylor Made's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, Taylor Made 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. Taylor Made reserves the right to recover costs incurred as a result of such prevention of its performance.
- 10.1.17. if the Customer delays or cancels any Services within 2 weeks of the agreed start date Taylor Made reserves the right to recover in full for any Project Team resource time that cannot be reallocated to other Services.
- 11.4.1. the charges payable for the Services shall be calculated in accordance with Taylor Made's standard daily fee rates in force from time to time, details of which shall be set out in the relevant Agreement;
- 11.4.2. the standard hourly rate is applicable during Business Hours. Weekdays from 18:00 to 23:59 and 06:00 to 07:59 is charged at time and a half. Weekdays from 00:00 to 05:59 and Weekends/Public holidays is charge at double time.
- 11.4.3. Taylor Made shall be entitled to charge on a pro-rata basis for part-days unless it has agreed with the Customer otherwise; and
- 11.4.4. Taylor Made's standard daily fee rates are calculated on the basis of Business Hours;
- 11.4.5. Over time charges require prior approval in writing by the Customer and will be charged at the Taylor Made prevailing rate.
- 11.5.** Taylor Made shall ensure that the members of the Project Team complete time sheets recording time spent on the Services for charging on a 'time and materials' basis, and Taylor Made shall use such time sheets to calculate the charges for the Services.
- 11.6.** Taylor Made may increase the Time and Material Rate two times per annum subject to giving the Customer one month's prior notice of any increase.

**Fixed Price Charging****11. CHARGES AND PAYMENT****Charges**

- 11.1.** In consideration for the provision of the Services, the Customer shall pay Taylor Made the Charges as set out in the relevant Agreement.
- 11.2.** The Charges shall be paid in pounds sterling, unless otherwise specified in the Charges Form.
- 11.3.** Taylor Made reserves the right to increase the Charges for each Subsequent Term pursuant to the Specific Terms and/or the Order Form.

**Time and Materials**

- 11.4.** If the Charges are to be charged on a 'time and materials' basis the charges shall be calculated as follows:

- 11.7.** Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the relevant Agreement.
- 11.8.** Unless stated otherwise in a Service Agreement, the total price shall be paid to Taylor Made in instalments as set out in the Agreement, with the payment of each instalment (where relevant) being conditional on Taylor Made having achieved the appropriate Project Milestone and/or Deliverable as set out in the Agreement.
- 11.9.** On achieving a Project Milestone and/or Deliverable, Taylor Made shall invoice the Customer for the charges that are then payable in accordance with the relevant Agreement.
- 11.10.** If Taylor Made has agreed to a fixed price in relation to any particular Agreement then Taylor Made reserves the right to amend the fixed da on giving notice to the Customer if:

## General Conditions

- 11.10.1. the scope of, or functionality required in the Service changes or increases as a result of the Customer's changes, requirements or instructions, or
- 11.10.2. there is any material increase in the cost of the Service.

**Monthly Charging**

- 11.11.** Where the Services are provided on a monthly charging basis, Taylor Made shall invoice the monthly Charges in accordance with the relevant Agreement.

**Invoicing and Payment**

- 11.12.** Invoicing: Unless otherwise specified in the Agreement or as otherwise set in out in these General Conditions, Taylor Made shall invoice the Charges to the Customer on a monthly basis. For avoidance of doubt Equipment will be invoiced in line with clause 8.2.
- 11.13.** VAT: All amounts payable by the Customer are exclusive of amounts in respect of Value Added Tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Agreement by Taylor Made to the Customer, the Customer shall, on receipt of a valid VAT invoice from Taylor Made, pay to Taylor Made such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 11.14.** Payment: Except as set out in clause 9.22 relating to invoice disputes, the Customer shall pay each invoice which is properly due and submitted to it by Taylor Made within 14 days date of invoice and, unless otherwise agreed by an authorised representative of Taylor Made in writing, payment is to be by direct debit. The Customer agrees that time is of the essence for all payments. Taylor Made shall be entitled to suspend the relevant Services for non-payment by the Customer providing it has given at least 14 days written notice of such suspension to the Customer beforehand.

- 11.15.** Equipment or Third Party Services: In respect of Equipment purchased by Taylor Made on behalf of the Customer, or Third Party Services provided to the Customer as part of the Services, the Customer shall pay for the same within 14 days date of invoice.
- 11.16.** Expenses: Unless otherwise specified in the Agreement the Customer where agreed in writing beforehand shall reimburse to Taylor Made, in addition to the Charges, the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably and properly incurred by Taylor Made's employees, subcontractors and agents in the provision of the Services. Taylor Made shall submit its invoices for expenses to the Customer monthly in arrears.
- 11.17.** Interest: If the Customer fails to make any payment due to Taylor Made under an Agreement by the due date for payment, and the reason for non-payment is not due to the amounts being disputed in good faith by the Customer, then, without limiting Taylor Made's remedies under clause 11, Taylor Made may charge the Customer interest accruing after the due date for payment on the overdue amount at the rate of 4% per annum above the Bank of England'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.
- 11.18.** Records: Taylor Made shall maintain complete and accurate records of the Services provided under an Agreement charged on a 'time and materials' basis (setting out the time spent and materials used by Taylor Made in providing such Services), sufficient to enable the Customer to verify the accuracy of any invoices submitted pursuant to an Agreement.

**11.19.** Set-off: All amounts due under an Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). Taylor Made may, without prejudice to any other rights it may have, set-off any liability of the Customer to Taylor Made against any liability of Taylor Made to the Customer.

**11.20.** Delivery, Title and Risk; Manufacturing requirements may cause Products to be delivered by instalments. Risk passes on delivery, title to Products passes to Customer when full payment is made. Taylor Made shall be entitled at any time before title passes (without liability), but with reasonable notice, to enter the premises of the Customer and re-possess Products or to use or sell the Products.

**11.21.** Acceptance of Products: Unless Customer shall, within seven working days following delivery, inspect the Products and notify Taylor Made, in writing, of any defects found, the Products shall be deemed to be accepted on delivery.

**11.22.** Invoice disputes: In the event that the Customer disputes, in good faith, any charges invoiced by Taylor Made, the Customer shall notify Taylor Made of such dispute within seven days of date of the respective invoice and the parties shall endeavour to resolve such dispute within fourteen (14) days following such notification. Any such dispute shall not affect the Customer's obligation to pay Taylor Made the undisputed part of the invoice. If no notice of a disputed invoice is given with seven days of receipt of the respective invoice the Customer is deemed to have accepted the invoice in full.

## 12. RIGHTS AND REMEDIES

**12.1.** The rights and remedies provided under an Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**12.2.** Where an Agreement provides for Service Credits to be payable or credited in respect of any failure to meet Service Levels, such sums shall be the Customer's sole and exclusive remedy for the failure in question and Taylor Made shall have no further liability to the Customer unless such failure relates to the fraud, negligence, wilful, wrongdoing and/or other material contractual breach of Taylor Made or its employees or sub-contractors.

**12.3.** Subject to clause 20, if any Services are not supplied in accordance with, or Taylor Made fails to comply with, any terms of this Agreement, the Customer's sole remedy shall be to require Taylor Made, without charge to the Customer, to carry out such additional work as is necessary to correct Taylor Made's failure.

## 13. INTELLECTUAL PROPERTY RIGHTS (IPR)

**13.1.** Each Party shall remain the owner of any IPR held by such Party prior to the date of the Agreement and of any IPR developed thereafter by such Party independently of the Agreement, or in case of third party IPR, in the respective third party. The foregoing shall also apply for any tools, templates, know-how, data and/or methods used by Taylor Made to perform the Services. Unless otherwise specifically set out to the contrary, nothing in the Agreement shall be construed to grant a Party any right, by licence or otherwise, to the IPR of the other Party.

- 13.2.** All IPR resulting from or otherwise deriving (directly or indirectly) from Taylor Made's provision of Services under the Agreement shall exclusively vest in and remain the property of Taylor Made. Taylor Made grants Customer, who accepts, a non-exclusive, personal, non-transferable and non-sub-licensable right to use the relevant Taylor Made IPR for the sole purpose of using the relevant Services for the purposes as outlined in the Agreement and solely during the term of the Agreement. In the event it has been agreed in a Delivery Agreement that Taylor Made shall deliver certain Deliverables as part of the Services, the Parties agree that all title, right and interest in such Deliverables shall to the maximum extent permitted by law be transferred and assigned to the Customer, unless otherwise explicitly agreed between the Parties, and the fee to be paid by Customer for such transfer shall be considered as included in the price for delivering the Services. Such transfer of rights shall however not prevent Taylor Made to deliver similar or identical deliverables to other parties without any restriction, subject to compliance with its confidentiality obligations under this Agreement.
- 13.3.** Customer grants Taylor Made a non-exclusive, world-wide, fully paid-up right to use, modify and reproduce any Customer IPR exclusively for the provision of the Services and/or Deliverables, without any right to divulge this IPR to a third party.
- 13.4.** For avoidance of doubt, title to all IPR in or related to Products shall remain vested in the respective Product Vendor and shall not be included in Taylor Made's licence granted pursuant to 12.2. All usage of the Products shall be subject to the applicable end user terms and conditions/end user licence agreement defined by the relevant Product Vendors.
- 13.5.** Taylor Made shall be entitled to use, for its own benefit and for the benefit of other customers/third parties, all knowledge, know-how and skills used and/or acquired when performing the Services in future assignments to other customers, subject to compliance with its confidentiality obligations under this Agreement.
- 14. CONFIDENTIALITY**
- 14.1.** Each party shall keep secret and confidential all Confidential Information of the other and shall not (and shall procure that its employees and/or officers shall not) copy, use or disclose any such information to any third party, other than as may be necessary to comply with its obligations under this agreement.
- 14.2.** The obligation of confidence shall not apply where the Confidential Information:
- 14.2.1. is required to be disclosed by operation of law;
  - 14.2.2. was in the possession of the recipient prior to disclosure by the other party;
  - 14.2.3. is subsequently acquired from a third party without any obligation of confidence;
  - 14.2.4. is or becomes generally available to the public through no act or default of the recipient; or
  - 14.2.5. is disclosed on a confidential basis for the purposes of obtaining professional advice.
- 14.3.** All materials, equipment and tools, drawings, specifications and/or data supplied by Taylor Made to the Customer shall at all times be and remain the exclusive property of Taylor Made, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until the termination or expiry of this agreement (or earlier if so requested by Taylor Made) when any such property shall be returned to Taylor Made and such property shall not be disposed of or used other than in accordance with Taylor Made's written instructions or authorisation.
- 15. NON – SOLICITATION**
- During the period of this Agreement, and for a period of one year following termination of this Agreement, neither party will actively solicit any of the other party's personnel who have been engaged in the delivery of the Service without prior written consent of the other.



## 16. DATA PROTECTION

- 16.1.** Clause 15 shall survive termination of this agreement and continue:
- 16.1.1. Indefinitely in the case of clauses 15.13 and 15.14; and
  - 16.1.2. Until 12 months following the termination or expiry of this agreement in the case of clauses 15.3 to 15.12 inclusive.
- 16.2.** It is acknowledged that the Customer is the Controller and Taylor Made is the Processor in respect of any Personal Data.
- 16.3.** Taylor Made shall process Personal Data;
- 16.3.1. in compliance with the obligations of Processors under DP Laws;
  - 16.3.2. in accordance with the terms of this agreement;
  - 16.3.3. in order to provide the Services to the Customer; and
  - 16.3.4. for so long as is required for the Services to be provided to the Customer and for such further period(s) thereafter as may be permitted under the terms of this Agreement.
- 16.4.** The Customer warrants that:
- 16.4.1. all Personal Data to be used in connection with the Services, prior to such data being provided to Taylor Made, shall comply in all respects with the DP Laws;
  - 16.4.2. all instructions given by the Customer to Taylor Made in respect of the Personal Data shall be lawful and in accordance with the DP Laws;
  - 16.4.3. it is satisfied that Taylor Made's processing operations are suitable to able Taylor Made to process Personal Data, and Taylor Made has sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of the DP Laws; and
  - 16.4.4. Taylor Made is reliant on the Customer for direction in respect of Taylor Made's access to and processing of Personal Data whilst providing the Services, and that Taylor Made shall not be liable for any claim brought by a data subject to the extent that it resulted directly from the Customer's instructions or failure to provide instructions.
- 16.5.** Where Taylor Made processes Personal Data on the Customer's behalf, Taylor Made shall;
- 16.5.1. process the Personal Data only in accordance with the Customer's documented instructions (unless required to do otherwise by the DP Laws or a court or other body of competent jurisdiction);
  - 16.5.2. notify the Customer if the DP Laws require Taylor Made to process Personal Data other than in accordance with the Customer's documented instructions; and
  - 16.5.3. notify the Customer if Taylor Made believes that an instruction infringes the DP Laws.
- 16.6.** Taylor Made shall implement and maintain, at its own cost and expense, appropriate technical and organisational measures:
- 16.6.1. in relation to the processing of Personal Data by Taylor Made; and
  - 16.6.2. taking into account the nature of the processing, as shall assist the Customer insofar as is possible in the fulfillment of the Customer's obligations to respond to Access Requests relating to Personal Data.
- 16.7.** Taylor Made shall:
- 16.7.1. have the right to engage and use from time to time suitable, reliable and appropriately qualified or experienced Sub-Processors to support its delivery of the Services (who may be based in the UK, the EEA or elsewhere) provided that the terms of this clause 14 are observed at all times. The Customer acknowledges and accepts that Taylor Made may undertake such engagements and may also decide, at its own discretion, to remove, replace or appoint additional Sub-Processors. Taylor Made shall inform the Customer of any intended changes concerning the addition or replacement of Sub-Processors from those which it uses as at the date of this Agreement (details of which are available upon request);
  - 16.7.2. appoint Sub-Processors only under a written contract containing materially the same obligations as in clause 14; and
  - 16.7.3. ensure that Taylor Made personnel authorised to process Personal Data are subject to binding written contractual obligations to keep the Personal Data confidential (except where disclosure is required in accordance with the DP Laws or a court or other body of competent jurisdiction).
- 16.8.** Taylor Made shall refer all Access Requests received to the Customer without undue delay.
- 16.9.** Taylor Made shall provide such reasonable assistance as the Customer reasonably requires (taking into account the nature of processing and the information available to Taylor Made) to ensure compliance with the Customer's obligations under DP Laws with respect to:
- 16.9.1. security of processing;
  - 16.9.2. data protection impact assessments;
  - 16.9.3. prior consultation with a supervisory authority regarding high-risk processing; and
  - 16.9.4. notification to the supervisory authority and/or communications to data subjects by the Customer in response to a Data Breach.
- 16.10.** Taylor Made will not transfer Personal Data to countries outside the EEA or to a country or third party in respect of which an adequacy decision has not been made or in relation to which Appropriate Safeguards have not been put in place without written consent from the Customer.
- 16.11.** Taylor Made shall, in accordance with DP Laws:
- 16.11.1. maintain written records of all categories of processing activities carried out on behalf of the Customer; and
  - 16.11.2. make available to the Customer such information as is reasonably necessary to demonstrate Taylor Made's compliance with the obligations of Processors under DP Laws, and allow for and contribute to audits, including inspections, by the Customer for this purpose, subject to the Customer:

- 16.11.2.1. giving Taylor Made reasonable prior notice of such information request, audit and/or inspection being required by the Customer;
- 16.11.2.2. ensuring that all information obtained or generated by the Customer in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the supervisory authority or as otherwise required by applicable laws); and
- 16.11.2.3. ensuring that such audit or inspection is undertaken during Taylor Made's normal Business Hours with minimal disruption to Taylor Made's or any Sub-Processor's business.
- 16.12.** In respect of any Data Breach involving Personal Data, Taylor Made shall promptly notify the Customer with details of the Data Breach.
- 16.13.** Subject to clause 14.14, Taylor Made shall, at the Customer's written request, either delete or return all the Personal Data comprised in Customer Data to the Customer in such form as the Customer reasonably requests, within a reasonable time after the earlier of:
- 16.13.1. the end of the performance of the relevant Services; or
- 16.13.2. once processing by Taylor Made of any Personal Data is no longer required for the purposes of this agreement.
- 16.14.** Taylor Made shall:
- 16.14.1. delete existing electronic copies of Personal Data comprised in Customer Data held in back-up or archival systems to the extent that doing so is technically and commercially feasible (unless storage of any data is required by applicable laws);
- 16.14.2. be entitled to retain copies of any Personal Data concerning personnel of the Customer to the extent that the same are contained in business communications between the parties and/or recorded as part of any service incident or problem notified to Taylor Made as part of the Services (provided that Taylor Made continues to hold such data in accordance with the DP Laws);
- 16.14.3. be entitled to retain and use anonymised data derived from the Customer's use of the Services for statistical and business improvement purposes.
- 17. CHANGE CONTROL**
- 17.1.** Customer may request a change to Taylor Made's scope of work after a Delivery Agreement has been concluded. Such change shall be governed by the change control mechanism as specified in this section 16.
- 17.2.** If Taylor Made determines that any additional work needs to be performed or if Taylor Made's scope of work needs to be adjusted after a Delivery Agreement has been concluded, Taylor Made shall inform the Customer's authorized representative promptly. Taylor Made shall not carry out any additional work or make any adjustments to its scope of work without the approval of the Customer's authorized representative to such additional work or adjustments in accordance with section 16.3.
- 17.3.** Change requests pursuant to sections 16.1 and 16.2 above shall be made in writing using a change request form delivered by the requesting Party to the authorized representative of the other Party.
- 17.4.** Where a request for change is made by the Customer, the Taylor Made shall within seven (7) days of receipt of the change request inform the Customer in writing of any change to the Agreed Specification, any increase or decrease in costs and any change to the estimated time schedule or inform the Customer that such requested change is not possible or unreasonable to execute. The Customer shall inform the Taylor Made in writing within seven (7) days of receipt of such written notice if the Customer wishes the requested change to be made and in such case the Taylor Made shall update the Agreed Specification(s).
- 18. ANTI-BRIBERY COMPLIANCE**
- 18.1.** Both parties shall:
- 18.1.1. comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- 18.1.2. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and
- 18.1.3. immediately notify the other party in writing if a foreign public official becomes an officer or employee. Both parties warrant that it has no foreign public officials as officers or employees at the date of execution by the parties of the Agreement.

**18.2.** Breach of this clause 17 by either party shall be deemed a material breach incapable of remedy.

## 19. LIMITATION OF LIABILITY

**19.1.** The following provisions set out the entire financial liability of Taylor Made (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

19.1.1. any breach of the term of the Agreement howsoever arising; and

19.1.2. any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising out of or in connection with the Agreement or the Services.

**19.2.** All warranties, conditions and other terms implied by statute or common law are excluded from the Agreement to the fullest extent permitted by law.

**19.3.** Nothing in this Agreement shall limit or exclude a party's liability for:

19.3.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

19.3.2. fraud or fraudulent misrepresentation; or

19.3.3. 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.

**19.4.** For any other liability, the limit of liability arising from a single event (or, where a series of connected events, the first event) shall be the total Charges paid or payable by the Customer under the relevant Service Conditions in that Contract Year.

**19.5.** Subject to clause 18.3, neither party to this Agreement shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection this Agreement or the delivery of the Services.

## 20. TERMINATION

**20.1.** Without affecting any other right or remedy available to it, either Party may terminate it with immediate effect by giving written notice to the other party if:

20.1.1. the other party fails to pay any amount due under the Agreement on the due date for payment and that amount is not due to an invoice dispute in accordance with clause 9.23 and remains in default more than forty-five (45) days after being notified in writing to make such payment;

20.1.2. the other party commits a material breach of any term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;

20.1.3. the other party repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;

20.1.4. 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

20.1.5. 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 its creditors;

20.1.6. 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);

20.1.7. 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);

20.1.8. 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;

20.1.9. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

20.1.10. 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 fourteen (14) days;

20.1.11. 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 19.1.4 to clause 19.1.10 (inclusive).

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

**20.2.** Taylor Made may immediately terminate or suspend all or any part of an Agreement if;

- 20.2.1. Taylor Made reasonably considers that use of the Services by the Customer or any User;

20.2.1.1. is in breach or may be in breach of any relevant statutory or regulatory act, regulation, code or similar;

20.2.1.2. is fraudulent or illegal or might be fraudulent or illegal; or

20.2.1.3. the termination or suspension is in accordance with an order, instruction or request of government, an emergency service organisation or other competent administrative authority or is as a result of Taylor Made otherwise losing its authorisation to provide the Services.

- 20.3.** Exercise by Taylor Made of its right of suspension in connection with non-payment by the Customer of Taylor Made's valid charges under an agreement shall not function as a waiver of any right of termination which Taylor Made may have under this agreement

## 21. CONSEQUENCES OF TERMINATION

**21.1.** On termination of the Agreement:

21.1.1. the parties shall comply with any relevant Exit Plan;

21.1.2. the Customer shall immediately pay to Taylor Made all of Taylor Made's outstanding unpaid invoices and interest and, in respect of the Services supplied, or yet to be supplied under the Term of the Agreement, for which no invoice has been submitted, Taylor Made may submit its invoice which will be payable on receipt. For Customer's with Services that are billed on a usage basis the value of outstanding unpaid invoices will be calculated on the average of the last 3 months of full billing;

21.1.3. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages which existed at or before the date of termination shall not be affected.

**21.2.** The following clauses shall continue in force: clause 12 (Intellectual Property), clause 13 (Confidentiality), clause 14 (Non-Solicitation), clause 17 (Anti-Bribery), clauses 18 (Limitation of liability), clause 20 (Consequences of termination), clause 21 (Dispute Resolution), clause 31 (Governing law), clause 32 (Jurisdiction).

## 22. DISPUTE RESOLUTION

**22.1.** In the event of any disagreement or dispute between the parties arising out of any matter relating to or arising out of the Agreement, the parties shall, in the first instance seek to resolve the matter by discussions between their respective representatives designated specially for this purpose. In the event these representatives are unable to resolve the disagreement or dispute within seven (7) business days, it shall be referred for resolution to a committee comprising a senior management representative from each party.

**22.2.** If the disagreement or dispute is not resolved pursuant to the above clause within 30 days from the date it first arose, or if either party believes that it is unlikely to be resolved in this matter, any such dispute shall be finally referred to arbitration. Such arbitration shall be conducted under the Rules of Arbitration, by one arbitrator appointed in accordance with the said rules. The place of arbitration will be UK. The language of the arbitration shall be English.

**22.3.** Notwithstanding the determination by the parties to utilise arbitration as specified above for resolution of disputes arising out of or in connection with the Agreement, nothing herein shall preclude either party from seeking and obtaining from a court of competent jurisdiction appropriate equitable relief, including without limitation, a temporary restraining order or other injunctive relief, to prevent a breach of the Agreement or to otherwise maintain the status quo pending outcome of any arbitration.

## 23. THIRD PARTY RIGHTS

**23.1.** A person who is not a party to the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

**24. FORCE MAJEURE**

- 24.1.** Neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control as specified in the Service Contract. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for sixty (60) days, the party not affected may terminate the Agreement by giving not less than thirty (30) days' written notice to the affected party.

**25. VARIATION AND WAIVER**

- 25.1.** No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 25.2.** A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 25.3.** A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 25.4.** A party that waives a right or remedy provided under the Agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

**26. SEVERANCE**

- 26.1.** If any provision or part-provision of the 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 the Agreement.
- 26.2.** If one party gives notice to the other of the possibility that any provision or part-provision of the 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.

**27. ASSIGNMENT AND OTHER DEALINGS**

- 27.1.** The Customer may not assign, transfer or subcontract any or all of its rights and obligations under the Agreement without Taylor Made's prior written consent.
- 27.2.** Taylor Made may assign, transfer or subcontract any or all of its rights and obligations under the Agreement.

**28. NO PARTNERSHIP OR AGENCY**

- 28.1.** Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 28.2.** Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**29. NOTICES**

- 29.1.** Any notice given to a party under or in connection the Agreement shall be in writing and shall be:
- 29.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 29.1.2. sent by fax to its main fax number; or
- 29.1.3. sent by email with a delivery receipt.



**29.2.** Any notice shall be deemed to have been received:

- 29.2.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 29.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 29.2.3. if sent by fax, at 9.00 am on the next Business Day after transmission.
- 29.2.4. if sent by email on receipt of delivery notification.

**29.3.** This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall include e-mail.

## 30. ENTIRE AGREEMENT

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

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

## 31. COUNTERPARTS

**31.1.** The Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

**31.2.** No counterpart shall be effective until each party has executed and delivered at least one counterpart.

## 32. GOVERNING LAW

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

## 33. JURISDICTION

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