

MICROBIOLOGICAL SOLUTIONS LIMITED
TERMS AND CONDITIONS FOR THE SUPPLY OF RESPONSIBLE PERSON SERVICES

These terms and conditions apply to the provision of all Services by Microbiological Solutions Limited to the Customer to the exclusion of any other terms and conditions or agreements. By engaging with Microbiological Solutions Limited and allowing us to commence the Services, the Customer acknowledges and agrees to be bound by these terms and conditions.

1. Definitions

Applicable Laws: means all laws, acts, regulations, directives, orders, standards, government guidance and codes of practice applicable to the manufacture, import, export, storage, distribution, marketing, sale, and supply of the Products in the market of Great Britain including but not limited to the assimilated law, Regulation (EC) No. 1223/2009 ("UK Cosmetic Products Regulation").

Amendment Fee: means the fee payable to amend the notification on the Portal.

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

Business Hours: the period from 10.00 am to 3.00 pm on any Business Day.

Change Order: has the meaning given in clause 9.1.

Charges: the Notification Fee, Commencement Fee, Amendment Fee, Surveillance Fee, Recall Fee, Management Fee, and the Residual Services Fee as set out in the Statement of Works, or as amended in accordance with the terms and conditions of this agreement.

Commencement Fee: means the fee payable at the Commencement Date.

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

Customer: the person to whom the Supplier provides the Services.

Customer Materials: all documents, information, items, Samples and other materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the Services, including the items provided pursuant to clause 5.1(d).

Deliverables: any output of the Services to be provided by the Supplier to the Customer as specified in the Statement of Works.

GMP: means the good manufacturing practice requirements needed to produce the Products safely and lawfully, including (without limitation) ensuring proper hygiene, sanitation, and cleanliness, maintaining appropriate manufacturing conditions.

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

Label: the label to be affixed to the Product bearing the Supplier's name as Responsible Person, its address, and all other relevant information as required by Article 19 of the UK Cosmetic Products Regulation.

Management Fee: means the annual management fee for each Product, payable quarterly in advance.

Notification Fee: means the fee payable in respect of each Product when the Product is notified on the Portal.

Portal means the Submit Cosmetics Products Notifications (SCPN) online notification system established for compliance with the Applicable Laws.

Products: the Customer's cosmetic products as agreed in writing by the Supplier and listed on the Supplier's live product tracker.

Recall Fee: means the fees of the Supplier in respect of a product recall in accordance with clause 7 of this agreement, calculated on a time spent basis in accordance with the rates set out in the Statement of Work, or as agreed in writing between the parties from time to time.

Residual Services: means any services relating to the Supplier's continued status as Responsible Person after the termination or expiry of this agreement for the remainder of the lifecycle of the Product(s).

Residual Services Fee: means the fee payable in respect of the Residual Services that will be provided by the Supplier after the termination or expiry of this agreement (however occurring).

Responsible Person: means a person appointed in accordance with Article 4 of the UK Cosmetic Products Regulation.

Samples: means samples of the Products supplied by the Customer to the Supplier to enable the Supplier to provide the Services.

Services: the Responsible Person services in respect of the Products as set out in these terms and conditions and the Statement of Works, including services which are incidental or ancillary to such services.

Statement of Works: the statement provided to the Customer setting out the extent, nature and duration of the Products and the Services.

Supplier: Microbiological Solutions Limited, a company registered in England and Wales under number 04218514, whose registered office is at Gollinrod, Walmsley, Bury, England, BL9 5NB.

Surveillance Fee: means the fee payable in relation to the post-market surveillance of the Products.

Territory: Great Britain (England, Wales, and Scotland).

VAT: value added tax chargeable in the UK.

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| 1.1 | Clause, schedule, and paragraph headings shall not affect the interpretation of this agreement. |
| 1.2 | A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). |
| 1.3 | The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules. |
| 1.4 | A reference to a company shall include any company, corporation, or other body corporate, wherever and however incorporated or established. |
| 1.5 | Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular. |
| 1.6 | A reference to legislation or a legislative provision is a reference to it as it is in force as at the date of this agreement. |
| 1.7 | A reference to legislation or a legislative provision shall include all subordinate legislation made as at the date of this agreement under that legislation or legislative provision. |
| 1.8 | A reference to writing or written includes email but not fax. |
| 1.9 | Any obligation on a party not to do something includes an obligation not to allow that thing to be done. |
| 1.10 | A reference to this agreement or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document, in each case as varied from time to time. |

1.11	References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.	(c)	provide, for the Supplier, its agents, subcontractors, consultants, and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as required by the Supplier;
1.12	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.	(d)	provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or third party) required by the Supplier in connection with the Services (e.g., data and information related to a product information file, cosmetic product safety report and a notification to the Portal) and ensure that they are accurate and complete, and to pay any costs in respect of obtaining them;
2.	Commencement and duration		
2.1	This agreement shall commence on the earlier of: (a) the date when the Statement of Works is signed; or (b) the date the provision of Services actually commenced (the Commencement Date) and shall continue (unless terminated earlier in accordance with clause 15 (Termination)), until the expiry of the term set out in the Statement of Works End Date), whereupon it shall be deemed to roll over for an equivalent term unless notice to terminate has been received in accordance with clauses 2.2 and 2.3.	(e)	obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Services, in all cases before the date on which the Services are to start;
2.2	If the Customer wishes to terminate this agreement in accordance with clause 2.1, it shall serve written notice of that intention on the Supplier at any time within the period beginning on the date that falls six months before the End Date and ending on the date falling three months from the End Date. Upon the service of such notice, this agreement shall terminate automatically on the End Date, subject to the remaining terms and conditions of this agreement.	(f)	comply at all times with GMP and Applicable Laws which apply to them in respect of the manufacture and supply of the Products;
2.3	Where this agreement has rolled over in accordance with clause 2.1, the Customer or the Supplier may terminate this agreement for convenience at any point during the rolled over term by providing the other with not less than six month notice in writing.	(g)	procure and ensure that, where a third party or parties supply or manufacture the Products, in whole or in part, (the Manufacturer) the Manufacturer (or all of them where there is more than one) shall at all times comply with all laws and regulations that apply with regard to the manufacture and sale of the Products (Manufacturer Applicable Laws), and complies with GMP;
3.	TUPE	(h)	audit the Manufacturer, at its own cost, at times notified by the Supplier in writing (but not more than once per annum) to ensure compliance with clause 5.1(g);
	The Supplier and the Customer acknowledge that, in some cases, TUPE may apply when this agreement commences. Where it does, the provisions of Schedule 1 shall apply.	(i)	procure that the Manufacturer(s) make available to the Supplier any and all books, records or persons and provide such access to their premises and facilities for the purposes of the Supplier verifying compliance with clause 5.1(h);
4.	Supplier's responsibilities	(j)	provide Samples in accordance with clause 6;
4.1	The Supplier shall use reasonable endeavours to supply the Services, and deliver the Deliverables to the Customer, in accordance with this agreement in all material respects.	(k)	inform its distribution network that the Supplier is appointed the Responsible Person for the Products in the Territory;
4.2	The Supplier shall supply the Services in the Territory only.	(l)	apply the Label to the Products and ensure that packaging and product claims of the Products comply with the UK Cosmetic Products Regulation;
4.3	The Supplier shall use reasonable endeavours to meet any performance dates specified by the Customer and agreed in writing by the Supplier, but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.	(m)	notify the Supplier immediately upon becoming aware of any risks to product safety, (serious) undesirable effects, consumer complaints, non-compliance with Applicable Laws, changes to manufacturing processes or any other issues of the Products that may require corrective action;
5.	Customer's obligations and indemnity	(n)	procure its importer executes a letter of appointment (the "Letter of Appointment") designating the Supplier as the Responsible Person for placing the Products listed on the live product tracker on the market of Great Britain in the form provided by the Supplier. The execution of the Letter of Appointment by the Customer's importer shall be a condition precedent to the Supplier's performance of Services. The Supplier has no obligation to provide any Services until such Letter of Appointment has been duly executed by the Customer's importer; and
5.1	The Customer shall:	(o)	ensure that the Letter of Appointment remains valid for the duration of this agreement between the Customer and the Supplier in respect of Responsible Person Services.
	(a) co-operate with the Supplier in all matters relating to the Services and comply at all times and as soon as practicable with the reasonable directions and recommendations of the Supplier;	5.2	If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants, or employees, then (without prejudice to any other right or remedy it may have):
	(b) appoint a manager for the Services and notify the Supplier of that appointment. That person shall have the authority to contractually bind the Customer on matters relating to the Services (including by signing Change Orders);	(a)	the Supplier shall have no liability whatsoever to the Customer for any such delay or omission; and

	(b) the Supplier shall be allowed a reasonable extension of time to perform its obligations.	7.2	The Customer expressly acknowledges and agrees the Supplier shall be entitled to withdraw or recall Products from market or sale in the Territory (a Product Recall) if, acting reasonably and in accordance with its appointment as Responsible Person for the Products it sees fit, including if:
5.3	Where the Supplier suffers any loss or damage as a consequence of the Customer's breach or breaches of the provisions of clause 5.1(a) - (o) inclusive, the Customer shall indemnify on demand and hold harmless the Supplier in respect of all loss or damage suffered or incurred.		(a) any applicable authority or enforcement agency instructs or recommends a Product Recall; or
6.	Samples		(b) any Product is (in the reasonable opinion of the Supplier) found to be unsafe to use, does not comply with Applicable Laws or the Supplier otherwise (acting reasonably) deems such action to be necessary in the circumstances in its capacity as Responsible Person for the Product.
6.1	The Customer shall supply Samples immediately upon request by the Supplier.		
6.2	The Customer shall ensure that the Samples:	7.3	The Customer shall not initiate any Product Recall without first jointly evaluating alternative corrective actions and obtaining consent from the Supplier, unless a Product Recall is a mandatory requirement under Applicable Laws, or a direct request made by a relevant regulatory authority or court in the Territory.
	(a) are sufficient for the Supplier in carrying out the Services;		
	(b) are an accurate and complete sample of the Products;		
	(c) are not damaged, contaminated or are otherwise unfit to the Supplier to supply the Services; and	7.4	The Customer will immediately notify the Supplier if at any time it becomes aware of:
	(d) are accompanied by a completed submission form and a safety data sheet where required by the Supplier, and in the format supplied by it, or as they may direct.		(a) any intended or required product recall or investigation into a potential product recall; or
6.3	Upon receipt of the Samples, the Supplier will inspect them to ascertain whether they are fit to use for the provision of the Services. If for any reason the Samples are not suitable the Supplier will request further Samples from the Customer which the Customer shall supply without delay, and in accordance with clause 6.2(a) - (d).		(b) any non-compliance or circumstances relating to the Products that would be reasonably expected to cause the Supplier or relevant regulatory authorities to carry out a Product Recall.
6.4	Samples received in breach of clause 6.2(a) - (d) may be rejected by the Supplier.	7.5	In the event that the Supplier instigates a Product Recall, the Supplier shall use reasonable endeavours to give the Customer written notice of the Product Recall and shall seek the Customer's co-operation including but not limited to:
6.5	Costs of delivery of the Samples to the Supplier shall be borne by the Customer, and risk and title shall transfer to the Supplier upon its actual receipt of the Samples.		(a) immediately suspending all sales, supply, import, and distribution activity relating to the affected batches of the Products identified in that notice; and
6.6	The Customer may request that the Supplier returns unused Samples by notifying the Supplier via the submission form noted at clause 6.2(d) and, as soon as reasonably practicable following receipt, the Supplier will return the unused Samples to the Customer, at the Customer's risk and cost, or make them available for collection by the Customer. The Supplier may destroy Samples not collected by the Customer after a reasonable period.		(b) promptly providing any records or other relevant information and reasonable assistance in strict compliance with the Supplier's instructions for implementing the Product Recall (including any action, such as immediately contacting all of its affected consumers and/or customers, conducting a product safety risk assessment, or bringing proceedings).
6.7	The Supplier reserves the right to charge the Customer an amount equivalent to reasonable storage fees and disposal costs of Samples not returned to or collected by the Customer, any such sums shall be payable on demand.	7.6	The Customer shall solely bear the costs of any Product Recall and shall be solely responsible for the physical recall of the Products from the market.
7.	Product Liability and Recall	7.7	The Customer shall indemnify the Supplier on demand from and against all losses, damages, costs, expenses, claims, and other liabilities awarded against or incurred by the Supplier arising out of or in connection with:
7.1	The Supplier, in its capacity as Responsible Person, shall have sole and unfettered right and entitlement to remove Products from and/or itself as Responsible Person from the Portal, if the Customer breaches the terms and conditions of this agreement including (without limitation):		(a) a Product Recall (whether instigated by the Supplier or not) including but not limited to transportation and logistics expenses for returns of the affected products, storage and disposal of recalled products, replacement or refund of recalled products; and administrative and personnel costs related to recall management;
	(a) if the Customer fails to pay the Supplier any sums by the due date for payment under clause 10;		(b) costs of notifying consumers, customers, or regulatory authorities;
	(b) if the Customer fails to provide the Supplier with any information, data, or Samples;		(c) conducting a safety risk assessment of the affected products including commissioning such safety risk assessment to a third-party contractor;
	(c) if the Customer fails to comply with any actions or recommendations or directions given by the Supplier or an applicable authority or enforcement agency; or		(d) any loss or damage to property, or death or personal injury caused to any person by a Product;
	(d) upon expiry or termination of this agreement (however occurring).		(e) any infringement or threatened infringement by the Products of a third party's Intellectual Property Rights; and

	(f) any penalties, fines, levies, impositions, enforcement actions or similar imposed by any authority or enforcement agency of competent jurisdiction	10.2	The Charges exclude the following which shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice:
	unless caused by and to the extent that the Supplier has acted negligently in discharging its duties as Responsible Person for the Products.		(a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services; and
8.	Non-solicitation		(b) the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Services as such items and their cost are approved by the Customer in advance from time to time.
8.1	Except in respect of any transfer of employees of the Supplier to the Customer pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), the Customer shall not, without the prior written consent of the Supplier, at any time from the date of this agreement to the expiry of 12 months after the termination or expiry of this agreement, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee of the Supplier in the provision of the Services.	10.3	Payment of the Charges shall be in the currency of the relevant invoice.
8.2	Any consent given by the Supplier in accordance with clause 8.1 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee.	10.4	The Customer shall be responsible for all bank charges and fees in relation to payment of the Supplier's invoices. Where invoices are not paid in the correct currency as required by clause 10.3, the Customer shall be responsible for, and shall pay to the Supplier on demand, any shortfalls caused by exchange rate fluctuations (where the shortfall exceeds £5.00).
9.	Change control	10.5	The Supplier may increase the Charges on 1 st April each year, either:
9.1	Either party may propose changes to the scope or execution of the Services, but no proposed changes shall come into effect until a Change Order has been agreed by a duly authorised representative of both parties in writing. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:		(a) in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and such increase shall be based on the latest available figure for the percentage increase in the Retail Prices Index; or
	(a) the Services;		(b) where there is a change in the Applicable Laws which renders the delivery and performance of the Services materially more expensive or time consuming for the Supplier to provide. In such case the parties shall meet (either virtually or in person) to discuss the matter and attempt to agree in good faith an appropriate increase to the Charges. Where no agreement is reached within ten Business Days of the first meeting, this agreement shall be deemed to immediately terminate without liability of the Supplier for any unperformed Services whatsoever.
	(b) the Supplier's existing charges;	10.6	The Supplier shall invoice the Customer for the Charges at the intervals specified in the Statement of Works. If no intervals are so specified, the Supplier shall invoice the Customer at the end of each month for Services performed during that month.
	(c) the timetable of the Services; and	10.7	The Customer shall pay each invoice submitted to it by the Supplier within 30 calendar days of receipt to a bank account nominated in writing by the Supplier from time to time.
	(d) any of the terms and conditions of this agreement.	10.8	Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this agreement on the due date:
9.2	If the Supplier wishes to make a change to the Services, it shall provide a draft Change Order to the Customer.		(a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 10.8(a) will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%;
9.3	If the Customer wishes to make a change to the Services:		(b) the Supplier may, without liability suspend all or part of the Services (or any other services the Supplier is providing to the Customer pursuant to any other agreement or engagement) until payment has been made in full.
	(a) it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed changes; and	10.9	All sums payable to the Supplier under this agreement:
	(b) the Supplier shall, as soon as reasonably practicable after receiving the information at clause 9.3(a), provide a draft Change Order to the Customer.		(a) are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
9.4	If the parties:		
	(a) agree to a Change Order, such amendment shall be in writing and shall amend this agreement; or		
	(b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 28 (Multi-tiered dispute resolution procedure).		
9.5	The Supplier may make a reasonable charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 9.3.		
10.	Charges and payment		
10.1	In consideration of the provision of the Services by the Supplier, the Customer shall pay the Charges as set out in the Statement of Works.		

	(b)	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).			instructions and provided that the Supplier shall notify the Customer if it knows or suspects that compliance with such specification or instruction may result in infringement.
10.10		The Supplier and the Customer acknowledge that the Supplier may be required to perform some services after the termination or expiry of this agreement including, but not limited to, dealing with enquiries about the Product consequent on the Label remaining applied to Products released to the market. The Customer acknowledges that the Residual Services Fee shall constitute the consideration for such services.	11.4	The Customer:	
11.		Intellectual property rights		(a)	undertakes not to use the Supplier's Intellectual Property Rights or the Intellectual Property in the Deliverables for any reason other than for the purposes of the Services;
11.1		In relation to the Deliverables:		(b)	warrants that the receipt and use of the Customer Materials in the performance of this agreement by the Supplier, its agents, subcontractors, or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
	(a)	the Supplier and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials;		(c)	shall indemnify the Supplier in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this agreement of the Customer Materials.
	(b)	the Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this agreement to copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and			
	(c)	the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 11.1(b) without the written consent of the Supplier.			
11.2		In relation to the Customer Materials, the Customer:	11.5		If either party (the Indemnifying Party) is required to indemnify the other party (the Indemnified Party) under this clause 11, the Indemnified Party shall:
	(a)	and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and		(a)	notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 11.3(b) or clause 11.4(c) (as applicable) (IPRs Claim);
	(b)	grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this agreement for the purpose of providing the Services to the Customer.		(b)	allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
11.3		The Supplier:		(c)	provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
	(a)	warrants that the receipt, use of the Services and the Deliverables by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party;		(d)	not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.
	(b)	shall, subject to clause 14 (Limitation of liability), indemnify the Customer in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables; and	12.		Compliance with laws and policies
	(c)	shall not be in breach of the warranty at clause 11.3(a), and the Customer shall have no claim under the indemnity at clause 11.3(b), to the extent the infringement arises from:	12.1		In performing its obligations under this agreement, the Supplier shall comply with the Applicable Laws.
		(i) the use of the Customer Materials in the development of, or the inclusion of the Customer Materials in any Deliverable;	12.2		The Customer shall comply with and shall procure that the Manufacturer complies with the Applicable Laws and GMP which apply in regard to the manufacture, distribution and sale of the Products.
		(ii) any modification of the Deliverables or Services, other than by or on behalf of the Supplier; and	12.3		Changes to the Services required as a result of changes to the Applicable Laws shall be agreed via the change control procedure set out in clause 9 (Change control).
		(iii) compliance with the Customer's specifications or instructions, where infringement could not have been avoided while complying with such specifications or			

13.	Confidentiality	(c)	loss of agreements or contracts;
13.1	Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination or expiry of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 13.2.	(d)	loss of anticipated savings;
		(e)	loss of use or corruption of software, data, or information;
		(f)	loss of or damage to goodwill; and
		(g)	indirect or consequential loss.
13.2	Each party may disclose the other party's confidential information:	14.7	The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 4 (Supplier's responsibilities). In view of these commitments, the terms implied by sections 3 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.
	(a) to its employees, officers, representatives, contractors, subcontractors, or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13; and	14.8	Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire six months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
	(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.		
13.3	No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.	15.	Termination
14.	Limitation of liability	15.1	Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
14.1	References to liability in this clause 14 include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.	(a)	the other party commits a material breach of any terms and conditions of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so;
14.2	Nothing in this this clause 14 shall limit the Customer's payment obligations under this agreement.	(b)	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 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
14.3	Nothing in this agreement shall limit the Customer's liability under the following clauses:	(c)	the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
	(a) clause 11.4 (IPR indemnities); and	(d)	the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
	(b) paragraph 1.4 of Schedule 1 (TUPE on entry).	(e)	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);
14.4	Nothing in this agreement limits any liability which cannot legally be limited, including but not limited to liability for:	(f)	an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership, or limited liability partnership);
	(a) death or personal injury caused by negligence;	(g)	the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
	(b) fraud or fraudulent misrepresentation; and	(h)	a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
	(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).	(i)	a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration, or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
14.5	Subject to clause 14.3 and 14.4, the Supplier's total liability to the Customer:		
	(a) for damage to property caused by the negligence of its employees and agents in connection with this agreement shall not exceed £1,000,000.00 for any one event or series of connected events; and		
	(b) subject to clause 5.2(a) for all other loss or damage which does not fall within subclause (a) or (b) shall not exceed an amount (excluding an amount equivalent to VAT) equivalent to the Charges incurred in the year the breach occurred.		
14.6	Subject to, clause 14.2, 14.3 and 14.4, this clause 14.6 specifies the types of losses that are excluded:		
	(a) loss of profits;		
	(b) loss of sales or business;		

	(j) 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 15.1(b) to clause 15.1(i) (inclusive); (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or (l) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms and conditions of this agreement is in jeopardy.	dispute resolution procedure), clause 29 (Governing law) and clause 30 (Jurisdiction). (b) Termination or expiry of this agreement shall not affect any rights, remedies, obligations, or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
		17. Force majeure
15.2	For the purposes of clause 15.1(a) material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake, or misunderstanding.	17.1 Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:
		(a) acts of God, flood, drought, earthquake, or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical, or biological contamination or sonic boom; (e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota, or prohibition, or failing to grant a necessary licence or consent; (f) collapse of buildings, fire, explosion, or accident; (g) any labour or trade dispute, strikes, industrial action or lockouts; and (h) interruption or failure of utility service.
15.3	Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if:	
	(a) the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 21 days after being notified in writing to make such payment; or (b) there is a change of Control of the Customer.	
16.	Obligations on termination and survival	
16.1	On termination or expiry of this agreement:	
	(a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt; (b) the Supplier shall on request return any of the Samples or Customer Materials not used up in the provision of the Services; (c) the Customer shall: (i) immediately remove or cause to be removed the Labels on all Products; or (ii) apply an over label to Product, which must completely and entirely obscure the Label; and (iii) shall notify its distribution network and make any other notifications that the Supplier reasonably requires, that the Supplier is no longer the Responsible Person for the Products. (d) For those Products where the Customer is unable to remove the Label, the provisions of this agreement with regard to (without limitation) payments, limitation of liability and Customer indemnification shall continue to apply.	17.2 Provided it has complied with clause 17.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly. 17.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party. 17.4 The Affected Party shall: (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than fourteen days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
16.2	Survival	17.5 If the Force Majeure Event prevents, hinders, or delays the Affected Party's performance of its obligations for a continuous period of more than four weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving two weeks' written notice to the Affected Party.
	(a) Subject and in addition to clause 16.1(c), on termination or expiry of this agreement, the following clauses shall continue in force: (Interpretation), clause 8 (Non-solicitation), clause 10 (Charges and payment), clause 11 (Intellectual property rights), clause 13 (Confidentiality), clause 14 (Limitation of liability), clause 16 (Obligations on termination and survival), clause 20 (Waiver), clause 22 (Severance), clause 24 (Conflict), clause 28 (Multi-tiered	18. Assignment and other dealings
		18.1 This agreement is personal to the Customer and the Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal

	in any other manner with any of its rights and obligations under this agreement.		the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
18.2	The Supplier may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights, or delegate certain parts for performing the Services under this agreement, provided that the Supplier gives prior written notice of such dealing to the Customer.	25.2	Each party confirms it is acting on its own behalf and not for the benefit of any other person.
19.	Variation Subject to clause 9 (Change control), no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).	26.	Third party rights This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
20.	Waiver	27.	Notices
20.1	A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.	27.1	Any notice given to a party under or in connection with this agreement shall be in writing and shall be: (a) 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 (b) sent by email to the address specified in the Statement of Works.
20.2	A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.	27.2	Any notice shall be deemed to have been received: (a) if delivered by hand, at the time the notice is left at the proper address; (b) if sent by pre-paid first-class post or other next working day delivery service, at 10.00 am on the second Business Day after posting; or (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 27.2(c), business hours means 10.00am to 3.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
21.	Rights and remedies The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.	27.3	This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
22.	Severance	28.	Multi-tiered dispute resolution procedure
22.1	If any provision or part-provision of this agreement is or becomes invalid, illegal, or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.	28.1	If a dispute arises out of or in connection with this agreement or the performance, validity, or enforceability of it (Dispute) then the parties shall follow the procedure set out in this clause: (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the senior manager of the Customer and senior manager of the Supplier shall attempt in good faith to resolve the Dispute; (b) if the senior manager of the Customer and senior manager of the Supplier are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to a director of the Customer and a director of the Supplier who shall attempt in good faith to resolve it; and (c) if the director of the Customer and director of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR.
22.2	If any provision or part-provision of this agreement is deemed deleted under clause 22.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.		
23.	Entire agreement		
23.1	This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter.		
23.2	Each party agrees that it shall have no remedies in respect of any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.		
24.	Conflict If there is an inconsistency between any of the provisions of this agreement and the provisions of the Schedules, the provisions of this agreement shall prevail.		
25.	No partnership or agency		
25.1	Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party		

The mediation will start no later than 30 days after the date of the ADR notice.

28.2 No party may commence any court proceedings under clause 30 (Jurisdiction) in relation to the whole or part of the Dispute until 45 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

28.3 If the Dispute is not resolved within 45 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 45 days, or the mediation terminates before the expiration of the said period of 45 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 30 (Jurisdiction).

29. **Governing law**

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

30. **Jurisdiction**

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

Schedule 1 TUPE on entry

1. TUPE on entry

1.1 In this Schedule 1 the following definitions apply:

Effective Date: the date of this agreement.

Employees: those employees whose contract of employment transfer to the Supplier from the Customer as at the Effective Date.

Employee Liability Information: in respect of each of the Employees:

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

Employment Regulations: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*).

1.2 The Customer and the Supplier believe that, pursuant to the Employment Regulations, at the Effective Date, the Supplier will become the employer of the Employees.

1.3 The Customer represents, warrants, and undertakes to the Supplier that:

- (a) no persons are employed or engaged in the provision of the Services other than the Employees;
- (b) none of the Employees has given or received notice terminating their employment or will be entitled to give notice as a result of the provisions of this agreement;
- (c) full particulars of the terms and conditions of employment of all the Employees (including all remuneration, incentives, bonuses, expenses and other payments and benefits whatsoever payable other than the pension benefits of any Employees disclosed to the Supplier) are set out in **Error! Bookmark not defined.****Error! Reference source not found.** of this Schedule 1;
- (d) there is not in existence any contract of employment with directors or employees of the Customer (or any contract for services with any individual) relating to the Services which cannot be terminated by three months' notice or less without giving rise to the making of a payment in lieu of notice or a claim for damages or compensation (other than a statutory redundancy payment or statutory compensation for unfair dismissal);
- (e) in relation to each of the Employees (and so far, as relevant to each of its former employees who were employed or engaged in the provision of the Services) the Customer has:

- (i) complied with all obligations imposed on it by Articles of the Treaty on the Functioning of the European Union, European Commission Regulations and Directives and all statutes, regulations, and codes of conduct relevant to the relations between it and its employees or it and any recognised trade union or appropriate representatives;
- (ii) maintained adequate and suitable records regarding the service of each of its employees;
- (iii) calculated and paid all holiday pay for periods of holiday taken under regulation 13 of the Working Time Regulations 1998 (*SI 1998/1833*) in accordance with the Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time;
- (iv) complied with all collective agreements and customs and practices for the time being dealing with such relations or the conditions of service of its employees; and
- (v) complied with all relevant orders and awards made under any statute affecting their conditions of service;
- (f) the Customer has not been involved in any industrial or trade disputes in the last five years and to the best of the Customer's knowledge, information and belief there are no circumstances which may result in any industrial dispute involving any of the Employees and none of the provisions of this agreement including the identity of the Supplier is likely to lead to any industrial dispute;
- (g) there is not outstanding any agreement or arrangement to which the Customer is party in relation to the Employees for profit sharing or for payment to any of the Employees of bonuses or for incentive payments or other similar matters;
- (h) the Customer has not entered into any recognition agreement with a trade union in relation to the Employees nor has it done any act which may be construed as recognition;
- (i) the Customer has complied with all recommendations made by the Advisory Conciliation and Arbitration Service in relation to the Employees and with all awards and declarations made by the Central Arbitration Committee in relation to the Employees;
- (j) there is no agreement, arrangement, scheme or obligation (whether legal or moral) for the payment of any pensions, allowances, lump sums or other like benefits on redundancy, on retirement or on death or during periods of sickness or disablement for the benefit of any of the Employees or former employees employed or engaged in the provision of the Services or for the benefit of dependants of such persons;
- (k) no amounts due to or in respect of any of the Employees (including PAYE and National Insurance and pension contributions) are in arrears or unpaid;
- (l) no monies or benefits other than in respect of contractual emoluments are payable to any of the Employees and there is not at present a claim, occurrence or state of affairs which may hereafter give rise to a claim against the Customer arising out of the employment or termination of employment of any of the Employees for compensation for loss of office or employment or otherwise and whether under contract or any statute or regulations or otherwise;

	(m)	the Customer has provided the Employee Liability Information to the Supplier regarding each of the Employees either in writing or by making it available to the Supplier in a readily accessible form;		informing the Supplier and obtaining its agreement to any approval of the request; and
	(n)	the Employee Liability Information contains information as at a specified date not more than 14 days before the date on which the information was provided to the Supplier;		(h) preserve and not waive legal professional privilege or any other privilege attaching to any of the documents or other information relating to the Claims in their possession without first obtaining the Supplier's consent to such waiver, such consent not to be unreasonably withheld.
	(o)	the Customer has notified the Supplier in writing of any change in the Employee Liability Information since the date on which it was provided;	1.6	All salaries and other emoluments including holiday pay, taxation and National Insurance contributions and contributions to retirement benefit schemes relating to the Employees shall be borne by the Customer up to and including the Effective Date and by the Supplier with effect from the Effective Date.
	(p)	the Employee Liability Information was provided not less than 28 days before the Effective Date; and		
	(q)	the Customer has agreed to, and co-operated with, pre-transfer consultation by the transferee in accordance with Part IV of TULRCA, if required.	1.7	The Supplier shall indemnify the Customer in full for and against all claims, costs expenses or liabilities whatsoever and howsoever arising, incurred, or suffered by the Customer including all legal expenses and other professional fees (together with any VAT thereon) in relation to:
1.4		The Customer shall indemnify the Supplier in full for and against all claims, costs, expenses, or liabilities whatsoever and howsoever arising, incurred, or suffered by the Supplier including all legal expenses and other professional fees (together with any VAT thereon) in relation to:		(a) any failure by the Supplier to comply with its obligations pursuant to the Employment Regulations; and
	(a)	the termination by the Customer of the employment of any of the Employees;		(b) anything done or omitted to be done by the Supplier in respect of any of the Employees whether before or after the Effective Date.
	(b)	anything done or omitted to be done in respect of any of the Employees which is deemed to have been done by the Supplier by virtue of the Employment Regulations; and		
	(c)	any claim made at any time by any employee of the Customer other than the Employees who claim to have become an employee of or have rights against the Supplier by virtue of the Employment Regulations (Claims);		
		provided that such costs, claims, expenses, and liabilities are not payable as a result of any act or omission of the Supplier.		
1.5		The Customer shall procure that its employees, agents, and successors in title shall promptly:		
	(a)	take such action in connection with the Claims as the Supplier shall from time-to-time reasonably request;		
	(b)	provide free of charge all such assistance and information as the Supplier may reasonably request relating to the Claims to enable the Claims to be pursued;		
	(c)	subject to any restriction imposed by law, provide the Supplier, its legal and other advisers with access to all documents, records or other information held by the Supplier relating to the Claims;		
	(d)	provide the Supplier and/or its professional advisers and experts with access from time to time to such members of staff as may be necessary to assist the Supplier with the preparation of its cases in relation to the Claims;		
	(e)	permit and require such employees as the Supplier and/or its professional advisers may reasonably request to meet with the Supplier and/or its legal advisers in normal working hours to prepare witness statements for trial, attend meetings with Counsel or experts and/or to attend any court hearing or trial in connection with the Claims for so long and as frequently as the Supplier and/or its legal or other professional advisers may reasonably require;		
	(f)	provide such other assistance as the Supplier may reasonably request in order to ensure the due and timely prosecution of the Claims;		
	(g)	resist in connection with the Claims any request for documents, information, access to relevant premises or to employees of the business by any third party without first		