

# Terms and conditions of business of Ten 4 Design Limited

Last updated 18th December 2023. See [changelog](#).

## Agreed terms

### 1. Interpretation

#### 1.1 Definitions:

**Ten4:** Ten 4 Design Limited, a company incorporated and registered in England and Wales with company registration number 04138592 whose registered office is the 3rd Floor, 86-90 Paul Street, London, EC2A 4NE.

**Applicable Laws:** all applicable laws, statutes, regulations and codes from time to time in force.

**body corporate:** a reference to a body corporate shall include any company, corporation or other body corporate wherever and however incorporate or established.

**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 9.00 a.m. to 5.00 p.m. on any Business Day.

**Expenses:** all reasonably incurred out-of-pocket and other expenses incurred by Ten4, its agents, subcontractors, consultants and employees, in the performance of the Services, including but not limited to travel and associated expenses.

**Charges:** the charges payable by the Client for the supply of the Services by Ten 4, as set out in the Contract.

**Client:** the person who purchases Services from Ten4.

**Client Materials:** all materials, equipment and tools, drawings, specifications and data supplied by a Client to Ten4.

**Client personal data:** any personal data which Ten4 processes in connection with the Contract, in the capacity of a processor on behalf of the Client.

**Conditions:** these terms and conditions set out in 1 (Interpretation) to clause 12 (General) (inclusive).

**Confidential Information:** means

- A. all commercially sensitive or proprietary information, data, drawings, specifications, documentation and know-how (whether written or oral) that either party may have imparted and may from time to time impart to the other party relating to the subject matter of the Contract;
- B. all Ten4's IPRs;
- C. all reports created in the course of the Contract;
- D. all commercial information (whether written or oral) concerning the business of either party;
- E. the terms of the Contract including but not limited to the Charges; and
- F. any other information that is, by its nature, confidential or that either party advises the other in writing to be confidential;
- G. but does not include any information that:

- H. the parties agree in writing is not Confidential Information;
- I. is, after the date of disclosure, received in good faith by one party from a third party who is lawfully in possession of that information and has a right to disclose it; or
- J. falls within the scope of clause 12.3(d).

**Contract:** a contract between the Client and Ten4 for the supply of Services incorporating these Conditions.

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

**Data Protection Legislation:** means the GDPR, the Data Protection Act 2018, and all applicable laws concerning privacy and the use of Personal Data.

**Deliverables:** all documents, products and materials developed by Ten4 or its agents, subcontractors and personnel as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts) and any deliverables provided for in the Contract.

**GDPR:** means the European Union General Data Protection Regulation ((EU) 2016/679) or any successor legislation enacted and implemented in England and Wales during the term of the Contract.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral 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.

**Person:** a person includes a natural person, body corporate or unincorporated body whether or not having separate legal personality).

**Personal Data:** has the meaning given to it in Article 4 of the GDPR.

**Services:** the Services, including without limitation any Deliverables, to be provided by Ten4 pursuant to the Contract.

**Services Start Date:** the day on which Ten4 is to start provision of the Services, as provided for in the Contract.

**Ten4 IPRs:** all Intellectual Property Rights subsisting in any Deliverables excluding any Client Materials incorporated in them.

## 1.2 **Interpretation:**

- (a) Unless expressly provided otherwise in the Contract, a reference to legislation or a legislative provision:
  - (i) is a reference to it as amended, extended or re-enacted from time to time; and
  - (ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision.

- (b) 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.
- (c) A reference to **writing** or **written** includes email.

## **2. Supply of services**

Ten4 shall supply the Services to the Client in accordance with the Contract from the Services Start.

2.1 Time shall not be of the essence in the provision of the Services and any timescales, dates or deadlines included in this Contract or otherwise communicated to the Client by Ten4 are estimates only. Delays in the provision of any of the Services shall not entitle the Client to:

- (a) refuse to accept any further Services;
- (b) withhold or delay payment for any Services;
- (c) claim damages; or
- (d) terminate the Contract.

2.2 In supplying the Services, Ten4 shall:

- (a) perform the Services in a professional manner, with reasonable care and skill and in accordance with recognised industry practice;
- (b) use reasonable endeavours to perform the Services in accordance with the service description set out in the Contract;
- (c) comply with all applicable laws, statutes and regulations from time to time in force provided that Ten4 shall not be liable under the Contract if, as a result of such compliance, it is in breach of any of its obligations under the Contract;
- (d) except for where expressly stated otherwise, be responsible for all payment obligations in respect of its staff and contractors, including all costs associated with the recruitment and continuing employment of its staff and for its own day-to-day employment relations; and
- (e) take reasonable care of all Client Materials in its possession and so far as they are not utilised in connection with the provision of the Services shall return them to the Client within a reasonable period after termination of the Contract or, if so requested by the Client, destroy them.

## **3. Client's obligations**

3.1 The Client shall:

- (a) cooperate with Ten4 in all matters relating to the Services;
- (b) provide, for Ten4, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client's premises, data and other facilities as required by Ten4;
- (c) provide, in a timely manner, such information as Ten4 may reasonably require, and ensure that it is accurate and complete in all material respects including but not limited to the Client Materials;

- (d) ensure that the Client Materials are accurate and complete and shall provide the Client Materials in a timely manner in order that Ten4 may perform its obligations under the Contract;
- (e) promptly notify Ten4 of any enquiries relating to the Services from any of the media or other third parties and notify Ten4 well in advance of any major events in the Client's business (such as the launch of new products, new services and/or the opening of new premises) which could affect the timeline for the provision of Services or Deliverables;
- (f) notify Ten4 well in advance of, and permit Ten4 to attend, any meetings with any advertising and/or marketing services agencies and other advisers engaged by the Client which, in the reasonable opinion of Ten4, could be relevant to the provision of the Services.

3.2 If Ten4's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, Ten4 shall:

- (a) not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay;
- (b) be entitled to payment of the Charges despite any such prevention or delay; and
- (c) be entitled to recover any additional costs, charges or losses Ten4 sustains or incurs that arise directly or indirectly from such prevention or delay.

#### **4. Intellectual property**

4.1 Ten4 and its licensors shall retain ownership of all Ten4 IPRs. The Client and its licensors shall retain ownership of all Intellectual Property Rights in the Client Materials.

4.2 Ten4 grants the Client, or shall procure the direct grant to the Client of, a perpetual, fully paid-up, worldwide, non-exclusive, royalty-free, licence to copy Ten4 IPRs for the purpose of receiving and using the Services and any Deliverables in the Client's business.

4.3 The Client grants Ten4 a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence to copy and modify the Client Materials for the term of the Contract for the purpose of providing the Services and Deliverables to the Client in accordance with the Contract.

4.4 The Client acknowledges and agrees that Ten4 may use any samples or parts of the Services and Deliverables supplied by Ten4 to the Client pursuant to the Contract for its own marketing purposes including but not limited to use on its website, portfolios and in pitches and presentations to other third parties.

4.5 The Client warrants and represents that:

- (a) it is the sole and beneficial owner of, and owns all Intellectual Property Rights and other rights and interest in, the Client Materials;
- (b) it is unaware of any infringement or likely infringement of the Intellectual Property Rights in the Client Materials;
- (c) all Intellectual Property Rights in the Client Materials are valid and subsisting and do not and will not infringe the rights of any third party; and

- (d) the use of the Client Materials by Ten4 (or any other person) pursuant to the Contract shall not infringe the rights of any third party. any third-party rights.

4.6 The Client shall indemnify Ten4 in full against any sums awarded by a court against Ten4 arising of or in connection with any claim brought against Ten4 for infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt or use of the Client Materials by Ten4.

## **5. Charges, expenses and payment**

5.1 In consideration for the provision of the Services, the Client shall pay Ten4 the Charges in accordance with this clause 5.

5.2 All amounts payable by the Client exclude amounts in respect of value added tax (**VAT**), which the Client shall additionally be liable to pay to Ten4 at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.

5.3 Ten4 shall submit invoices for the Charges plus VAT if applicable to the Client at the intervals specified in the Contract;

5.4 The Client shall pay each invoice due and submitted to it by Ten4, within 30 days of the date of invoice, to a bank account nominated in writing by Ten4 in pounds Sterling (£ GBP).

5.5 The Client shall reimburse Ten4 for:

- (a) the cost of hotel, subsistence, travelling and other ancillary expenses reasonably incurred by the individuals whom Ten4 engages in connection with the Services; and
- (b) the cost to Ten4 of any materials or services procured by it from third parties for the provision of the Services as such items and their cost are approved by the Client in advance from time to time

as soon as is reasonably practicable following Ten4's submission of written statements and receipts and, in any event, within 5 Business Days of such submission.

5.6 If the Client fails to make any payment due to Ten4 under the Contract by the due date for payment, then, without limiting Ten4's remedies under 8 (Termination):

- (a) the Client 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 will accrue each day at 5% a year above the Bank of England's base rate from time to time, but at 5% a year for any period when that base rate is below 0%.
- (b) Ten4 may suspend all Services until payment has been made in full.

5.7 All amounts due under the Contract from the Client to Ten4 shall be paid by in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **6. Limitation of liability**

- 6.1 References to liability in this 6 include every kind of liability arising under or in connection with the Contract including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 6.2 Nothing in this 6 shall limit the Client's payment obligations under the Contract.
- 6.3 Nothing in the Contract shall limit the Client's liability under clause 4 or clause 12.3 of the Contract.
- 6.4 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation; and
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 6.5 Subject to 6.2 (No limitation on Client's payment obligations), 6.3 (Liability under identified clauses) and clause 6.4 (Liabilities which cannot legally be limited), Ten4 and its employees, agents, personnel and representatives total liability to the Client for all loss or damage is limited to the amount of the Charges received by Ten4 from the Client under the Contract over the period of six (6) completed calendar months of the term immediately preceding the date on which the event (or series of events) giving rise to Ten4's liability occurred, subject always that Ten4's total aggregate liability each calendar year shall not exceed the Charges received by Ten4 from the Client during such calendar year.
- 6.6 The caps on the parties' liabilities shall not be reduced by:
- (a) payment of an uncapped liability; or
  - (b) amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 6.7 Subject to 6.2 (No limitation on Client's payment obligations), 6.3 (Liability under identified clauses) and 7.4 (Liabilities which cannot legally be limited), this 6.7 sets out the types of loss that are wholly excluded:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (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.
- 6.8 The Client accepts that Ten4's employees, agents, personnel and representatives will accept, in good faith, any claims or suggestions made or implied by the Client in respect of the performance of the Services and the Client's products, services and business generally.

Ten4 will not submit any materials or Deliverables (including without limitation Ten4 IPRs) that it creates in the performance of the Services to the Advertising Standards Authority or other bodies and will not have such materials or Deliverables checked by solicitors or other professional advisors prior to submission unless the Client specifically requests this in writing (in which case, the parties shall agree the costs in relation thereto before this is undertaken). It is the Client's sole responsibility to ensure that all explicit and implied claims made within such materials and/or the Deliverables are true, accurate and not misleading and can be verified should this ever be required. To the fullest extent permitted by law, Ten4 shall not be liable for any loss, damage, liability, or claim arising as a result of matter included within such materials and/or any Deliverables submitted to the Client.

- 6.9 Ten4 has given commitments as to performance of the Services with relevant in 2. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 6.10 Unless the Client notifies Ten4 that it intends to make a claim in respect of an event within the notice period, Ten4 shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

## **7. Independent contractors**

- 7.1 The parties shall perform all their duties and obligations under the Contract as independent entities, and each party is and shall be for the all purposes of the Contract an independent contractor and not an employee or agent of the other party. Nothing in the Contract shall establish any partnership between the parties or be construed to give either party the power to direct or control the daily activities of the other party, or constitute the parties as principal and agent, employer and employee, joint ventures, co-owners, or otherwise as participants in a joint undertaking.
- 7.2 Ten4 may subcontract the whole or part of its rights and obligations hereunder to any of its affiliates.

## **8. Termination**

- 8.1 Without affecting any other right or remedy available to it, either party to the Contract may terminate it with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 10 Business Days after being notified in writing to do so;
  - (b) the other party repeatedly breaches any of the terms and conditions of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having an intention or ability to give effect to the terms of the Contract.
  - (c) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent

restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (d) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (e) the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.2 Without affecting any other right or remedy available to it, Ten4 may terminate the Contract with immediate effect by giving written notice to the Client if:

- (a) the Client fails to pay any amount due under the Contract on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment; or
- (b) there is a change of control of the Client.

8.3 On termination of the Contract for whatever reason:

- (a) the Client shall immediately pay to Ten4 all of Ten4's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Ten4 may submit an invoice, which shall be payable immediately on receipt;
- (b) each party shall return or destroy (at the other party's election) all Confidential Information held by such party and which belongs to the other;
- (c) any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect; and
- (d) termination or expiry of the Contract shall not affect any of the 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 Contract which existed at or before the date of termination or expiry.

## **9. Non-solicitation and employment**

The Client shall not, without the prior written consent of Ten4, at any time from the date on which any Services commence to the expiry of twelve (12) months after the completion of such Services, solicit or entice away from Ten4 or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of Ten4 in the provision of the Services.

## **10. Acceptable Use Policy**

Where relevant and applicable in relation to a Service, a Client shall at all times comply with the provisions of this clause 10 and failure by the Client to comply with the provisions of this clause will be deemed a material irredeemable breach of the Contract.

### **10.1 Prohibited uses**

In connection with the use of a Service by a Client including the transmission, storage or presentation of any information, data or other material, use:



- (a) in a way that breaches any applicable local, national or international law or regulation.
- (b) In a way that is unlawful or fraudulent or has any unlawful or fraudulent purpose or effect.
- (c) for the purpose of harming or attempting to harm minors in any way.
- (d) to bully, insult, intimidate or humiliate any person.
- (e) to transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (spam).
- (f) to knowingly transmit any data, send or upload any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware

is not allowed and will be treated as a breach of the Contract.

Where Ten4 provide any interactive service, we Ten4 provide clear information to the Client about the kind of service offered, if it is moderated and what form of moderation is used (including whether it is human or technical).

Ten4 are under no obligation to oversee, monitor or moderate any interactive service it provides on its site, and Ten4 expressly excludes any liability for any loss or damage arising from the use of any interactive service by a user in contravention of its content standards, whether the service is moderated or not.

## 10.2 **Content standards**

These content standards apply to any and all information, data or other material which the Client, or any other person, allowed or otherwise permitted or authorised, (whether directly or indirectly), by the Client to do so, transmits, stores or presents in connection with the use of a Service (**Contribution**), and to any interactive services associated with it.

The Content Standards must be complied with in spirit as well as to the letter. The standards apply to each part of any Contribution as well as to its whole and Ten4 reserves the right to determine, in its discretion, whether a Contribution breaches the Content Standards.

A Contribution must:

- (a) be accurate (where it states facts).
- (b) be genuinely held (where it states opinions).
- (c) comply with the law applicable in England and Wales and in any country from which it is posted.

A Contribution must not:

- (a) be defamatory of any person.
- (d) be obscene, offensive, hateful or inflammatory.
- (e) bully, insult, intimidate or humiliate.
- (f) promote sexually explicit material.
- (g) Include child sexual abuse material.
- (h) promote violence.

- (i) promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age.
- (j) Infringe any copyright, database right or trade mark of any other person.
- (k) be likely to deceive any person.
- (l) breach any legal duty owed to a third party, such as a contractual duty or a duty of confidence.
- (m) promote any illegal content or activity.
- (n) be in contempt of court.
- (o) be threatening, abuse or invade another's privacy, or cause annoyance, inconvenience or needless anxiety.
- (p) be likely to harass, upset, embarrass, alarm or annoy any other person.
- (q) impersonate any person or misrepresent your identity or affiliation with any person.
- (r) give the impression that the Contribution emanates from Ten4, if this is not the case.
- (s) advocate, promote, incite any party to commit, or assist any unlawful or criminal act such as (by way of example only) copyright infringement or computer misuse.
- (t) contain a statement which you know or believe, or have reasonable grounds for believing, that members of the public to whom the statement is, or is to be, published are likely to understand as a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism.
- (u) contain any advertising or promote any services or web links to other sites.

## **11. Data protection**

- 11.1 For the purposes of this 11, the terms controller, processor, data subject, personal data, personal data breach and processing shall have the meaning given to them in the Data Protection Act 2018.
- 11.2 Each of Ten4 and the Client will comply with all applicable requirements of the Data Protection Legislation. This 11 is in addition to, and does not relieve, remove or replace obligations or rights of Ten4 or the Client under the Data Protection Legislation.
- 11.3 Ten4 and the Client will have determined that, for the purposes of the Data Protection Legislation:
- (a) Ten4 shall process the Client personal data as details in the Contract as processor on behalf of the Client; and
  - (b) the Client shall act as controller of the Client personal data set out in the relevant SoW.
- 11.4 Should the determination in 11.3 change, the parties shall use all reasonable endeavours to make any changes that are necessary to this 11 and the Contract.
- 11.5 The Client consents to, (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by Ten4 in connection with the

processing of Client personal data, provided these are in compliance with the then-current version of the Ten4's privacy policy available at <https://www.Ten4design.co.uk/legal/privacy> (Privacy Policy). In the event of any inconsistency or conflict between the terms of the Privacy Policy and this agreement, the Privacy Policy will take precedence.

- 11.6 Without prejudice to the generality of 11.2, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Client personal data to Ten4 for the duration and purposes of this agreement.
- 11.7 In relation to the Client personal data, the Contract sets out the scope, nature and purpose of processing by Ten4, the duration of the processing and the types of personal data and categories of data subject.
- 11.8 Without prejudice to the generality of 11.2, Ten4 shall, in relation to Client personal data:
- (a) process that Client personal data only on the documented instructions of the Client unless Ten4 is required by Applicable Laws to otherwise process that Client personal data (Purpose).
  - (b) implement the appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Client personal data and against accidental loss or destruction of, or damage to, Client personal data, which the Client has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
  - (c) ensure that any personnel engaged and authorised by Ten4 to process Client personal data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
  - (d) assist the Client insofar as this is possible (taking into account the nature of the processing and the information available to Ten4), and at the Client's cost and written request, in responding to any request from a data subject and in ensuring the Client's compliance with its obligations under Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (e) notify the Client without undue delay on becoming aware of a personal data breach involving the Client personal data;
  - (f) at the written direction of the Client, delete or return Client personal data and copies thereof to the Client on termination of the agreement unless Ten4 is required by Applicable Law to continue to process that Client personal data. For the purposes of this 11.8(f) Client personal data shall be considered deleted where it is put beyond further use by Ten4; and
  - (g) maintain records to demonstrate its compliance with this 11, and allow for reasonable audits by the Client or the Client's designated auditor, for this purpose, on reasonable written notice, such audits to be carried out at the sole cost of the Client.
- 11.9 The Client provides its prior, general authorisation for Ten4 to appoint sub-processors to process the Client personal data, provided that Ten4:

- (a) shall ensure that the terms on which it appoints such processors comply with Data Protection Legislation, and are consistent with the obligations imposed on Ten4 in this 11;
- (b) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of Ten4; and
- (c) shall inform the Client of any intended changes concerning the addition or replacement of the processors, thereby giving the Client the opportunity to object to such changes provided that if the Client objects to the changes and cannot demonstrate, to Ten4's reasonable satisfaction, that the objection is due to an actual or likely breach of Data Protection Legislation, the Client shall indemnify Ten4 for any losses, damages, costs (including legal fees) and expenses suffered by Ten4 in accommodating the objection.

11.10 Either party may, at any time on not less than 30 days' notice, revise this 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

## **12. General**

12.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control such as flood, storm, earthquake, fire, explosion, or other event of nature, epidemic (whether local or otherwise), pandemic, or national or international health emergency (whether foreseeable or not and including but not limited to any outbreak of the COVID-19 virus or any variant of it and any law or governmental order, rule, regulation or direction, judgment, order or decree enacted specifically in response thereto, act or restraint of any local Authority, government department, court order or any order or restraint issued or imposed by any other regulatory or quasi-regulatory body, strike, lockout or other industrial action; or any other event outside the reasonable control of the affected party (each a **Force Majeure Event**), then the relevant obligation(s) shall be suspended for the duration of the Force Majeure Event provided that the affected party:

- (a) notifies the other party of the nature and extent of the Force Majeure Event and the obligation(s) impacted as soon as practicable after the affected party becomes aware of the Force Majeure Event and its impact on its obligations; and
- (b) the affected party uses its reasonable endeavours to perform its obligations on time notwithstanding the Force Majeure Event(s). Nothing in this clause will operate to suspend any obligation of the Client to make payment of Fees or other monies under the Contract when the same become due. If a Force Majeure Event prevents a party from materially performing its obligations under the Contract for a period of more than sixty (60) consecutive days the other party may terminate the Contract on notice in writing to the affected party, such notice having immediate effect.

## **12.2 Assignment and other dealings.**

- (a) The Client shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the

Contract without Ten4's prior written consent (such consent not to be unreasonably withheld).

- (b) Ten4 may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under the Contract.

### 12.3 Confidentiality.

- (a) Each of Ten 4 and the Client undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by 12.3. For the purposes of this 12.3, **group** means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.
- (b) Each of Ten4 and the Client may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each of Ten 4 and the Client shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this 12.3; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use any other party's confidential information for any purpose other than to perform its obligations under the Contract.
- (d) The obligations of confidentiality in this clause 12.3 (Confidentiality) will not apply to Confidential Information that:
  - (i) the receiving party can clearly show was independently available to it from a third party having the right to disclose it;
  - (ii) at the time of execution of the Contract is in the public domain, or subsequently enters the public domain, through no fault of the receiving party or any other person to whom it discloses the information;
  - (iii) is disclosed by receiving party as reasonably required to enforce its rights or perform its obligations under the Contract; or
  - (iv) where Ten4 is the receiving party, Ten4 (acting reasonably) uses or discloses such Confidential Information as necessary or desirable to provide the Services, including in any press releases or publicity materials approved by the Client or which form part of the Services agreed by the Client.

### 12.4 Anti-Bribery and Corruption.

Each of Ten4 and the Client shall comply with all applicable laws, statutes, and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010, and shall immediately notify the other if it becomes aware of any breach of this clause 12.4 or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with the performance of the Contract.

#### 12.5 **Entire agreement.**

- (a) The Contract 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.
- (b) Each of Ten 4 and the Client acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each of Ten 4 and the Client agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

12.6 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by Ten4 and the Client (or their respective authorised representatives).

#### 12.7 **Waiver.**

- (a) A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A failure or delay by Ten4 or the Client to exercise any right or remedy provided under the Contract 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 Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

12.8 **Severance.** If any provision or part-provision of the Contract 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 12.8 shall not affect the validity and enforceability of the rest of the Contract.

#### 12.9 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
  - (i) 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
  - (ii) sent by email to the address specified in the Contract Details.
- (b) Any notice or communication shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) 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
  - (iii) 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

12.9(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

- (c) This 12.9 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.

#### 12.10 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

12.11 **Non-Solicitation.** During the term of the Contract and for a period of twelve (12) consecutive months immediately following its termination or expiry, neither party will solicit for employment, either directly or indirectly, any person who is employed or contracted by the other party who is involved in the provision of the Services, provided that a party may employ or contract any such person who responds to a public advertisement for a role with that party or who is referred to that party by a recruitment agency.

#### 12.12 Dispute resolution

- (a) **Procedure:** If a dispute arises in relation to the Contract (**Dispute**), the parties will attempt to resolve the dispute using the dispute resolution process set out below and, subject to clause 12.12(e) below, no party to the Contract may commence any court proceedings relating to a Dispute unless it has complied with and exhausted the dispute resolution procedure set forth in this clause 12.12 (**Dispute Resolution**).
- (b) **Informal resolution:** Either party may initiate the dispute resolution process by giving written notice of the dispute to the other party (**Dispute Notice**). Upon receipt by the other party of the Dispute Notice, the parties will work together in good faith to resolve such dispute. Pending resolution of the Dispute, each party, to the extent it is able, will continue to perform its obligations under the Contract.
- (c) **Mediation:**
  - (i) If the parties cannot resolve the dispute by negotiation within a period of ten (10) Business Days following the date of receipt of the Dispute Notice or such longer period as the parties may agree in writing prior to such period of ten (10) Business Days having elapsed (**Negotiation Period**), then either party may, by written notice to the other party (**Mediation Notice**), require the dispute to be referred to a mediator appointed by the Centre for Effective Dispute Resolution (the “Mediator”).
  - (ii) The Mediator shall determine the rules and procedures by which the mediation of the Dispute shall be conducted, save that each party may make a written statement of its case to the Mediator prior to the commencement of the mediation. The Mediator shall be entitled to be paid his or her reasonable fee, which the parties shall pay in equal shares, unless the Mediator orders otherwise.
- (d) **No Resolution: If:**

- (i) the parties are unable to agree a resolution to the Dispute within forty (40) days of the Dispute having been referred to Mediator in accordance with clause 12.12(c) above; or
  - (ii) the parties fail to appoint a Mediator within one (1) calendar month of the Negotiation Period having ended, then either party may exercise any remedy available to it under applicable law, including without limitation commencing legal proceedings in connection with the Dispute.
- (e) **Interlocutory relief:** Nothing in this clause 12.12 (Dispute Resolution) will prevent either party, at any time, from seeking any urgent interlocutory relief from a court of competent jurisdiction in relation to any matter that arises under the Contract.

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

**12.14 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 the Contract or its subject matter or formation.

## Changelog

18th December 2023 - Removal of clause 11.11

13th October 2023 - Fixed error in clause 6.3, referencing clause 11.3 and replaced with 12.3

9th June 2023 - Updated Ten4's registered office address