

- 1.1 In these Conditions, the following expressions shall have the following meanings:
- "**Conditions**" means these terms and conditions of contract for the supply of professional services;
- "**Confidential Information**" means any and all information provided by either party under the Contract that is either: (a) marked as being confidential; and/or (b) any and all information or data disclosed (whether in writing, orally or in any other form, and whether directly or indirectly) by a party to the other party, that is of a type that may reasonably be considered confidential, including without limitation, the terms and conditions of the Contract, any Specification, drawings, samples or other documents provided by a party in respect of the Services and the existence of the relationship between the Customer and Hargreaves;
- "**Contract**" means the contract between Hargreaves and the Customer for the execution of Services, comprising:
- (i) these Conditions, together with any documents referred to herein; and
 - (ii) the Services Order and any special conditions, Specification or other documents referred to therein.
- "**Contract Price**" means the sum stated in the Services Order as being payable by the Customer to Hargreaves in consideration of the execution of the Services in accordance with the Conditions;
- "**Control**" means the power of a person to direct the affairs of another whether by virtue of ownership of shares, contracts or otherwise;
- "**Customer**" means the person, firm or company with whom the Contract is made, as more particularly set out in the Services Order;
- "**Hargreaves**" means Hargreaves (UK) Services Limited (CRN: 03735251) with its registered office at West Terrace, Esh Winning, Durham, County Durham, DH7 9PT;
- "**Key Personnel**" means the key individuals employed by Hargreaves specified in the Services Order who will perform the Services;
- "**Insolvency Event**" occurs when:
- (a) a resolution is passed or an order is made for the winding up of the other party (otherwise than for the purpose of solvent amalgamation or reconstruction); or
 - (b) the other party becomes subject to an administration order; or
 - (c) a receiver or administrator is appointed over the whole or part of the other party's business or any step is taken for the appointment of any such receiver or administrator; or
 - (d) an encumbrancer takes possession of any of the other party's property or equipment; or
 - (e) if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986; or
 - (f) if a proposal is made for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors; or
 - (g) the other party is unable to pay its debts as they fall due within the meaning of Section 123 of the Insolvency Act 1986; or
 - (h) the other party, being an individual or partnership, is declared or adjudicated bankrupt or enters into any arrangement or composition with its creditors; or
 - (i) anything analogous to the events set out in sub clauses (a) to (h) occurs in any jurisdiction.
- "**Intellectual Property Rights**" means any and all intellectual property rights protected under the law anywhere in the world, including without limitation, patents, designs, copyright, trade marks, know-how, technical information, rights in data and database rights (whether registered or unregistered or any applications for registration) whether now known or future;
- "**Loss**" means any and all loss, damage, penalties, costs and expenses (including legal expenses and disbursements) arising from any and all liabilities, obligations, awards, actions, claims, demands and/or proceedings whatsoever and howsoever caused or arising and whether or not such losses were reasonably foreseeable at the time the Contract was made;
- "**Materials**" means any and all reports, designs, drawings, models, plans, specifications, design details, photographs, brochures, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Services and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Services.
- "**Services**" means the services to be performed and/or provided by Hargreaves in accordance with the terms of the Contract, as more particularly set out in the Services Order;
- "**Services Order**" means the Customer's order for the Services incorporating these Conditions, as submitted in writing by Customer.
- "**Site**" means any location of the Customer where Services are to be performed by Hargreaves;
- "**Specification**" means any specification set out in the Services Order; and
- "**Working Day**" a day (other than a Saturday, Sunday or public holiday) when banks are open for 3.6 business in London;
- 1.2 In these Conditions:
- 1.2.1 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 headings are for ease of reference only and shall not affect the interpretation or construction of these Conditions; and
- 1.2.4 any list of examples following the word including shall be interpreted without limitation to the generality of the preceding words.
- 1.3 The Conditions shall apply to all Services Orders made by the Customer for the Services and are the only Conditions upon which Hargreaves is prepared to deal with the Customer. No terms or conditions endorsed upon, delivered with or contained in any documents submitted by the Customer to Hargreaves shall form part of the Contract and the Customer waives any right which it otherwise might have to rely on such terms and conditions.
- 1.4 If there is any conflict between the provisions of, or documents forming, the Contract, the following order of prevalence shall apply (unless expressly stated otherwise in a Services Order):
- 1.4.1 firstly, the Services Order;
 - 1.4.2 secondly, these Conditions; and
 - 1.4.3 finally, any other documents referred to in the Services Order.
- 2 EXECUTION OF THE SERVICES**
- 2.1 Hargreaves shall carry out and complete the execution of the Services in accordance with the Contract.
- 2.2 Hargreaves shall perform the Services with reasonable skill, care and diligence and in accordance with all applicable laws.
- 2.3 Hargreaves shall use reasonable endeavours to employ the Key Employees for the performance of the Services. In the event that any of the Key Employees are no longer employed by Hargreaves, Hargreaves shall use reasonable endeavours to employ appropriately qualified and skilled substitutes to perform the Services.
- 2.4 For the avoidance of doubt, Hargreaves is under no obligation to carry out any Services which are not within the scope of the Contract and Hargreaves is entitled to charge the Customer for such additional services.
- 2.5 The Customer warrants and represents to Hargreaves that:
- 2.5.1 it will provide, for Hargreaves, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's Site, premises, office accommodation, data and other facilities as reasonably required by Hargreaves including any such access as is specified in a Services Order;
 - 2.5.2 it will provide to Hargreaves in a timely manner all document, information, items and materials in any form (whether owned by the Customer or a third party) required under a Services Order or otherwise reasonably required by Hargreaves in connection with the Services and ensure that they are accurate and complete;
 - 2.5.3 it shall inform Hargreaves of all health and safety and security requirements that apply at the Site;
 - 2.5.4 it shall notify Hargreaves of any relevant laws, regulations, consents and licences applicable to Hargreaves in relation to its carrying out the Services at the Customer's Site. Hargreaves shall not be liable for any Loss suffered by the Customer in the event that the Customer fails to comply with this Condition 2.5.4.
- 2.6 If Hargreaves' performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors, consultants or employees then, without prejudice to any other right or remedy it may have, Hargreaves shall be granted an extension of time to perform its obligations equal to the delay caused by the Customer.
- 3 CONTRACT PRICE**
- 3.1 In consideration of the performance of Services by Hargreaves, the Customer shall pay to Hargreaves the Contract Price.
- 3.2 Unless otherwise agreed in the Services Order, the Contract Price excludes the following, which shall be payable by the Customer following submission of an appropriate invoice:
- 3.2.1 the out-of-pocket costs and expenses reasonably incurred by the individuals whom Hargreaves engages in connection with the Services including travel and overnight stays; and
 - 3.2.2 the cost to Hargreaves of any materials or services procured by Hargreaves 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.
- 3.3 Hargreaves shall invoice the Customer monthly, unless otherwise agreed in the Services Order.
- 3.4 The Customer shall pay such invoices within thirty (30) days of the date of receipt to a bank account nominated in writing from time to time by Hargreaves.
- 3.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Hargreaves any sum due under the Contract on the due date:
- 3.5.1 the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the base lending rate from time to time of the Bank of England until such payment has been made. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and
 - 3.5.2 Hargreaves may suspend part or all of the Services until payment has been made in full.
- 3.6 All sums payable to Hargreaves under the Contract:
- 3.6.1 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
 - 3.6.2 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).
- 4 TERMINATION FOR CAUSE**
- 4.1 Without prejudice to any other rights or remedies to which it may be entitled, Hargreaves shall have the right at any time by giving notice in writing to the Customer to terminate the Services Order or the Contract immediately if:
- 4.1.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - 4.1.2 the Customer is subject to a change of Control.
- 4.2 Either party shall be entitled to terminate the Contract if:
- 4.2.1 the other party commits a material and/or persistent breach of any of the Conditions and (if the breach is capable of remedy) fails to remedy it within seven (7) days of receipt of notice in writing requiring remedy of the breach; or
 - 4.2.2 the other party is subject to an Insolvency Event.

5 TERMINATION FOR CONVENIENCE

Hargreaves shall be entitled to terminate the Contract for convenience at any time by providing not less than seven (7) days' written notice to the Customer.

6 CONSEQUENCES OF TERMINATION

- 6.1 Upon termination or expiry of the Contract, howsoever caused or occasioned:
- 6.1.1 all existing Services Orders shall terminate automatically; and
- 6.1.2 the Customer shall immediately pay to Hargreaves all of Hargreaves' outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, Hargreaves may submit an invoice, which shall be payable immediately on receipt.
- 6.2 The termination of the Contract however arising will be without prejudice to the rights and duties of either party accrued prior to termination or expiry. The Conditions which impliedly or expressly have effect or continue after termination or expiry will continue to be enforceable notwithstanding termination or expiry of the Contract.

7 INSURANCE

Hargreaves shall take out and maintain professional indemnity insurance of not less than the amount specified in the Services Order or, in the absence of such amount being specified, £2,000,000 in the annual aggregate.

8 LIMITATION OF LIABILITY

- 8.1 Hargreaves shall not be liable to the Customer for any of the following:
 - 8.1.1 loss of profits;
 - 8.1.2 loss of business;
 - 8.1.3 loss of anticipated savings;
 - 8.1.4 loss of revenue;
 - 8.1.5 loss of opportunity;
 - 8.1.6 loss of contracts;
 - 8.1.7 loss of data;
 - 8.1.8 loss of goodwill or reputation; or
 - 8.1.9 special, indirect or consequential loss;

and in each case whether arising under or in connection with this Contract, whether in contract, tort (including negligence) or otherwise, and irrespective of whether any of the above are direct or indirect loss or damage.

- 8.2 The aggregate liability of Hargreaves, whether in contract, tort (including for negligence) or for breach of statutory duty (howsoever arising), misrepresentation or otherwise in connection with this Contract, shall be limited to an amount equal to the Contract Price paid by the Customer to Hargreaves in respect of the Services executed. The Customer shall have a duty to mitigate any loss and/or damage arising from any claim.
- 8.3 Hargreaves' liability for any Loss suffered is limited to a just and equitable proportion of the total Loss calculated by reference to the extent of Hargreaves' responsibility having regard to the extent of the Customer's responsibility and that of any third party irrespective of the Customer's ability to enforce a claim against such other party for any reason.
- 8.4 Hargreaves shall not be liable to the Customer if Hargreaves is unable to provide the Services or otherwise fulfil its obligations as a result of any cause beyond our Hargreaves' control.
- 8.5 Nothing in these Conditions shall limit or exclude liability:
 - 8.5.1 for death or personal injury caused by negligence;
 - 8.5.2 for fraud or fraudulent misrepresentation; or
 - 8.5.3 that cannot be excluded by law.
- 8.6 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 this Contract.

9 CONFIDENTIALITY

- 9.1 Each party shall keep, and shall procure that their employees, agents, representatives and sub-contractors shall keep, in strict confidence, all Confidential Information received from the other party or which otherwise comes into its possession. Each party shall restrict disclosure of such Confidential Information to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging its obligations under the Contract.
- 9.2 This Condition 9 shall apply during the continuance of the Contract and after its termination or expiry howsoever arising without limitation in time.
- 9.3 The Customer shall not, without the prior written consent of Hargreaves, publicly announce or advertise in any form that it is receiving services from Hargreaves and/or its relationship with Hargreaves pursuant to the terms of the Contract.

10 INTELLECTUAL PROPERTY

- 10.1 All Intellectual Property Rights of either party in existence prior to the date of the commencement of the Services under the Contract (**Background IPR**), will be owned by and shall remain vested in the party in whom the Background IPR was owned and vested in prior to the date of the commencement of the Services under the Contract.
- 10.2 Subject to Condition 10.3 and without prejudice to Condition 10.1, all Intellectual Property Rights produced and/or arising from the performance of the Contract shall vest and remain solely and exclusively vested in Hargreaves (and to the extent the same are not already vested in Hargreaves, the Customer hereby assigns to Hargreaves with full title guarantee and free from all third party rights, all such Intellectual Property Rights). For the avoidance of doubt, all Intellectual Property Rights in the Materials shall vest in and be the exclusive property of Hargreaves.
- 10.3 Provided that there are no payments overdue under this Contract from the Customer to Hargreaves, Hargreaves hereby grants to the Customer a royalty-free and non-exclusive licence to use its Background IPR and the Materials to the extent required to obtain the benefit of the Services.

11 ASSIGNMENT AND SUB-CONTRACTING

- 11.1 The Customer shall not assign the whole or any part of the Contract or any interest in it without the prior written consent of Hargreaves.

- 11.2 Hargreaves shall not sub-contract the execution of the Services or part thereof without the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed).

12 HEALTH AND SAFETY

- 12.1 Hargreaves shall use reasonable endeavours to observe all health and safety rules and regulations that apply at the Site and/or in relation to the Services, provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.
- 12.2 The Customer shall notify Hargreaves as soon as it becomes aware of any health and safety hazards and/or failures to observe the health and safety rules and regulations and any other security requirements that apply at the Site.

13 GENERAL

- 13.1 This Contract set out the entire agreement between the parties in relation to the subject matter hereof and supersedes any previous agreement relating to the subject matter of the Contract, whether written or oral. Each party acknowledges and agrees that in entering into the Contract it places no reliance on any representation or warranty in relation to the subject matter of this Contract, nor shall it have any remedy in relation to the subject matter of the same save as expressly set out in the Contract. The only remedy available to either party for breach of such warranties or representations shall be for breach of contract under the terms of this Contract. Nothing in this Condition or in this Contract shall operate so as to exclude or restrict any remedy or liability for fraud or fraudulent misrepresentation.
- 13.2 Any notice to be given under the Contract shall be in writing and may be made or delivered by one party hereto to the other at the registered office of the party or to such other address as such party may have notified to the other party giving such notice for the purposes of this Condition and shall be deemed to have been made or delivered by letter, when left at the address or, if sent by prepaid first class recorded delivery, forty eight hours (48) after posting. If such notice arrives on a day which is not a Working Day, it shall be deemed to have been delivered on the next following Working Day.
- 13.3 Hargreaves is appointed as an independent contractor and neither party shall have the authority to act in the name of or otherwise bind the other in any way, whether contractually or otherwise.
- 13.4 If any provision of the Contract is held by any court or other competent authority to be void or unenforceable (in whole or part), the other provisions of the Contract and the remainder of the affected provisions shall continue to be valid.
- 13.5 The rights and remedies provided in the Contract are cumulative and not exclusive of any rights or remedies otherwise provided by law.
- 13.6 The failure of a party to exercise or enforce any right under the Contract shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.
- 13.7 A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 13.8 Save as expressly set out in this Contract, no variation of the Contract shall be binding upon the parties unless the same is in writing signed by a duly authorised representative of both Hargreaves and the Customer.
- 13.9 The Contract, and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in all respects in accordance with the laws of England and Wales, and the English courts shall have exclusive jurisdiction in all matters relating to the Contract (whether of a contractual or tortious nature or otherwise).

September 2021