



Criterion IT Ltd

Terms & Conditions

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1. INTERPRETATION

1.1 Definitions. In these Terms & Conditions, the following definitions apply:

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

Charges: Mean the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Commencement Date: Has the meaning set out in clause 2.2.

Contract: Means the contract between Criterion and the Customer for the supply of Services in accordance with these Conditions.

Criterion: Means Criterion IT Ltd, a company incorporated in England and Wales under company number 07496097 and whose registered company address is situated at 15 Riverside Park, Wimborne, Dorset, BH21 1QU.

Criterion Materials: Has the meaning set out in clause 4.1(g).

Customer: Means the person, firm or corporate body together with any subsidiary or associated company as defined by the Companies Act 1985 being provided with goods or services by Criterion and described or referenced in the Order.

Deliverables: Mean the deliverables set out in the Schedules to these Terms & Conditions.

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

Order: Means the Customer's order for Services as set out in the Customer's purchase order form, or the Customer's written acceptance of a quotation by Criterion, or email request as the case may be.

Regulatory Breach: Means any act, omission, breach or default by Criterion of its obligations under these Terms & Conditions which results in the Customer being in breach of any applicable legislation, regulations, requirement or direction imposed by a relevant regulator or which results in the Customer being investigated or having orders, sanctions, penalties or fines imposed or other action taken against it by a relevant regulator.

Services: Means the services, including the Deliverables, supplied by Criterion to the Customer as set out in the Specification.

Specification: Means the description or specification of the Services provided in writing by Criterion to the Customer.

Terms & Conditions: Means these terms and conditions as amended from time to time in accordance with clause 12.8.

1.2 Construction. In these Conditions, the following rules apply:

- (a) A "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

- (b) A reference to a party includes its personal representatives, successors or permitted assigns;
- (c) A reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) Any phrase introduced by the terms "**including**", "**include**", "**in particular**" or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) A reference to "**writing**" or "**written**" includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Terms & Conditions.
- 2.2 The Order shall only be deemed to be accepted when Criterion accepts the Order at which point and on which date the Contract shall come into existence ("**Commencement Date**").
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Criterion which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by Criterion, and any descriptions contained in Criterion's marketing material are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Terms & Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 The Services are subject to any additional provisions as set out in the Schedules to these Terms & Conditions. For the avoidance of doubt, the Schedules to these Terms & Conditions are incorporated into these Terms & Conditions and the Customer agrees to adhere to the provisions contained therein.
- 2.7 Any quotation given by Criterion shall not constitute an offer, and is only valid for a period of [20] Business Days from its date of issue.

3. SUPPLY OF SERVICES

- 3.1 Criterion shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 Criterion shall use all reasonable endeavours to meet any performance dates specified in the Schedules to these Terms & Conditions, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 Criterion shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Criterion shall notify the Customer in any such event.
- 3.4 Criterion warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.5 Criterion shall maintain appropriate insurance cover with a reputable insurance company against all relevant liabilities and indemnities that may arise under the Contract, and will provide to the Customer upon request evidence of such insurance cover.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall:

- (a) Ensure that the terms of the Order, and any information it provides which may affect the content of the Specification, are complete and accurate;
- (b) Co-operate with Criterion in all matters relating to the Services;
- (c) Provide Criterion, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Criterion;
- (d) Provide Criterion with such information and materials as Criterion may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (e) Prepare the Customer's premises for the supply of the Services;
- (f) Obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (g) Keep and maintain all materials, equipment, documents and other property of Criterion ("**Criterion Materials**") at the Customer's premises in safe custody at its own risk, maintain the Criterion Materials in good condition until returned to Criterion, and not dispose of or use the Criterion Materials other than in accordance with Criterion's written instructions or authorisation; and

4.2 If Criterion's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):

- (a) Criterion shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Criterion's performance of any of its obligations;
- (b) Criterion shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Criterion's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) The Customer shall reimburse Criterion on written demand for any costs or losses sustained or incurred by Criterion arising directly or indirectly from the Customer Default.

5. CHARGES AND PAYMENT

5.1 The Charges for the Services shall be either on a time and materials basis or as set out in the Specification/the Schedules to these Terms & Conditions:

- (a) The Charges shall be calculated in accordance with Criterion's standard daily fee rates, as set out in the the Specification/the Schedules to these Terms & Conditions;
- (b) Criterion's standard daily fee rates for each individual are calculated on the basis of an seven-hour day from 8.30 am to 5.00 pm worked on Business Days;
- (c) Criterion shall be entitled to charge an overtime rate of 150 per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 5.1(b) 150% for Saturdays & 200% Sundays; and
- (d) Criterion shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Criterion engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any

associated expenses, and for the cost of services provided by third parties and required by Criterion for the performance of the Services, and for the cost of any materials.

- 5.2 Criterion reserves the right to increase its standard daily fee rates, provided that such charges cannot be increased more than once in any 12 month period. Criterion will give the Customer written notice of any such increase 3 months before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify Criterion in writing within 2 weeks of the date of Criterion's notice and Criterion shall have the right without limiting its other rights or remedies to terminate the Contract by giving 1 months' written notice to the Customer.
- 5.3 Criterion shall invoice the Customer on completion of the Services/monthly in arrears or as specified in the schedule.
- 5.4 The Customer shall pay each invoice submitted by Criterion within 20 Business Days of the date of the invoice or as specified in the schedule/quotation, in full and in cleared funds to a bank account nominated in writing by Criterion by Direct Debit unless specified in the schedule, and time for payment shall be of the essence of the Contract.
- 5.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by Criterion to the Customer, the Customer shall, on receipt of a valid VAT invoice from Criterion, pay to Criterion such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.6 Without limiting any other right or remedy of Criterion, if the Customer fails to make any payment due to Criterion under the Contract by the due date for payment Criterion shall have the right to charge interest on the overdue amount at the rate of 5% per cent per annum above the then current Nat West's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 5.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Criterion in order to justify withholding payment of any such amount in whole or in part. Criterion may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Criterion to the Customer.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Criterion.
- 6.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on Criterion obtaining a written licence from the relevant licensor on such terms as will entitle Criterion to license such rights to the Customer.
- 6.3 All Criterion Materials are the exclusive property of Criterion.

7. CONFIDENTIALITY

- 7.1 A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives and client data which are of a confidential nature ("**Confidential Information**") and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its officers, employees, agents or

subcontractors, and any other Confidential Information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such Confidential Information to such of its officers, employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such officers, employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.

7.2 In respect of Confidential Information of the Disclosing Party, and further to the general obligation of confidentiality as set out in clause 7.1, the parties agree as follows:

- (a) The Receiving Party shall not at any time whether during or after completion of the Services, unless expressly authorised in writing by the Disclosing Party, disclose to any person, exploit, or make use in any way whatsoever of any of the Confidential Information of the Disclosing Party;
- (b) The Receiving Party shall give notice to the Disclosing Party of any unauthorised misuse, disclosure, theft or loss of the Disclosing Party's Confidential Information immediately upon becoming aware of the same; and
- (c) The provisions of this clause 7 shall not apply to Confidential Information which:
 - (i) Is or comes into the public domain through no fault of the Receiving Party, or its officers, employees, agents or subcontractors;
 - (ii) Is lawfully received by the Receiving Party from a third party free of any obligation of confidence at the time of its disclosure;
 - (iii) Is evidenced by the Receiving Party as having been independently developed by the Receiving Party, without access to or use of the Confidential Information in question;
 - (iv) Is required by law, by court or governmental or regulatory order to be disclosed provided that the Receiving Party, where possible, notifies the Disclosing Party at the earliest opportunity before making any such disclosure.

7.3 This clause 7 shall survive termination of the Contract.

8. LIMITATION OF LIABILITY

8.1 Nothing in these Terms & Conditions shall limit or exclude Criterion's liability for:

- (a) Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) Fraud or fraudulent misrepresentation; or
- (c) Breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982.

8.2 Subject to clause 8.1:

- (a) Criterion shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract or arising out of or in connection with any misrepresentation made by the Customer or inaccurate information provided to Criterion by the Customer; and
- (b) Criterion's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value

of the related Services as detailed in the schedule provided to the Customer in the 12 month period prior to date of the Customer's loss.

8.3 Except as set out in these Terms & Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.4 This clause 8 shall survive termination of the Contract.

9. TERMINATION

9.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) The other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 20 Business Days of that party being notified in writing of the breach;
- (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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (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 its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) 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) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) The other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) 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 its assets and such attachment or process is not discharged within 10 Business Days;
- (g) An application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) A floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) A person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (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 9.1(b) to clause 9.1(i) (inclusive);
- (k) The other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

- (l) The other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 9.2 Without limiting its other rights or remedies, Criterion may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the Due Date for payment.
- 9.3 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract in accordance with the provisions of the Schedules to these Terms & Conditions.
- 9.4 Without limiting its other rights or remedies, Criterion shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and Criterion if the Customer becomes subject to any of the events listed in clause 9.1(b)) to clause 9.1(l), or Criterion reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the Due Date for payment.

10. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) The Customer shall immediately pay to Criterion all of Criterion's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Criterion shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) The Customer shall return all of Criterion Materials [and any Deliverables which have not been fully paid for]. If the Customer fails to do so, then Criterion may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) The accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, 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; and
- (d) Clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- (e) ** Any and all customer printed or digital data stored on archived or backed-up on Criterion's Servers will be deleted after 30days ** OR EQUIVELENT WORDING

11. ANTI-BRIBERY

- 11.1 Each party shall comply with applicable anti-bribery legislation and regulations and each party shall use its reasonable endeavours to ensure that all officers, employees, agents or subcontractors of that party shall comply with applicable anti-bribery legislation and regulations.
- 11.2 Without limitation in respect of clause 11.1:
 - (a) Neither party shall (directly or indirectly) offer or give or request, agree to receive or accept any bribe, other improper payment or advantage or bribe any UK or foreign public official in breach of applicable anti-bribery legislation or regulations; and
 - (b) Each party shall implement, maintain and enforce adequate procedures designed to prevent persons associated with that party engaging in conduct which contravenes the Bribery Act 2010.

11.3 Each party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 11.

11.4 The expressions 'adequate procedures', 'associated with' and 'foreign public official' shall be construed in accordance with the Bribery Act 2010 and associated guidance.

12. GENERAL

12.1 Force majeure:

(a) For the purposes of this Contract, "**Force Majeure Event**" means an event beyond the reasonable control of Criterion including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Criterion or any other party), failure of a utility service, third party communication service, third party IT service, communication network, or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of equipment, plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

(b) Criterion shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

(c) If the Force Majeure Event prevents Criterion from providing any of the Services for more than 4 weeks, Criterion shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

12.2 Assignment and subcontracting:

(a) Criterion may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

(b) The Customer shall not, without the prior written consent of Criterion, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

12.3 Notices:

(a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

(b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

(c) This clause 12.3 shall not apply to the service of any proceedings or other documents in any legal action. [For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.]

12.4 Waiver:

(a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or

delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

12.5 **Severance:**

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

12.6 **No partnership:** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

12.7 **Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.

12.8 **Variation:** Except as set out in these Terms & Conditions, any variation, including the introduction of any additional terms and conditions to the Contract, or amendments to the Customer's requirements, Deliverables or the Specification, shall only be binding when agreed in writing and signed by Criterion. Criterion may from time to time and without notice amend these Terms & Conditions, and will do so by posting the new Terms & Conditions on the Criterion website. Each and every amendment will be effective immediately and applies to all Services carried out for existing and future Customers.

12.9 **Professional regulation compliance:** In respect of professional regulation compliance:

- (a) Criterion will allow the following to audit, obtain information from, and inspect the records (including electronic records) in relation to any Services supplied in accordance with these Terms & Conditions:
 - (i) A relevant regulator (including the appointed agent of a relevant regulator);
 - (ii) The Customer (including the appointed agent of the Customer).
 - (iii) All costs incurred by Criterion in respect of any inspections or compliance requested by the customer or their professional body will be charged to the Customer
- (b) Criterion agrees with the Customer that it will provide Services in a manner that:
 - (i) Complies with any applicable legislation and/or regulations;
 - (ii) Is consistent with and complies with any equality and diversity legislation that may apply in Criterion's jurisdiction;
 - (iii) Is consistent with and complies with any relevant anti-money laundering, counter terrorist financing, and anti-bribery legislation and/or regulations that apply in Criterion's jurisdiction.
- (c) Criterion agrees to ensure that its officers, employees, agents and subcontractors are made aware of and agree in writing to observe the obligations as set out in this clause 12.9.
- (d) This clause 12.9 shall survive termination of the Contract.

12.10 **Step-in rights:** In respect of step-in rights:

- (a) In this clause 12.10, "**Trigger Event**" shall mean any of the following:
 - (i) If Criterion commits a Regulatory Breach or engages in an act or omission that, if unremedied, would result in a Regulatory Breach;
 - (ii) If Criterion fails to supply the Services in 3 consecutive months;
 - (iii) If, in the Customer's reasonable opinion, Criterion is unable or unwilling to provide any Services, or there is a real risk of degradation to the Services due to any breach by Criterion of its obligations under the Contract.
- (b) If a Trigger Event occurs, the Customer shall be entitled, upon giving Criterion (where practicable) not less than 10 Business Days' written notice providing details of the Trigger Event and the Customer's proposed action in response (including the Customer's proposed timetable for the same), to do any one or more of the following:
 - (i) Assume performance of the Services or any part of them;
 - (ii) Appoint another supplier to assume performance of the Services or any part of them itself.
- (c) Criterion shall provide reasonable assistance and information to the Customer to enable them to exercise the step-in rights, analyse the cause of and (if possible) resolve the relevant Trigger Event, minimise disruption and degradation to the Services and to restore the Services either to Criterion or, if the Contract is ultimately terminated, to the Customer or a replacement service provider.
- (d) For any period during which Criterion is not performing the Services by reason of the Customer exercising its step-in rights under this clause 12.10, the Charges for those Services that Criterion is not performing shall not be payable by the Customer to Criterion.
- (e) Criterion shall not be liable for any loss or damage to the extent caused by any act or omission of any other person in the course of the Customer exercising step-in rights.
- (f) The Customer shall be entitled to exercise step-in rights until such time as the Customer is satisfied (acting reasonably) that the Trigger Event giving rise to the step-in rights has been remedied (to the extent that it is capable of remedy), and:
 - (i) Where the Trigger Event resulted from a breach or default by Criterion of its obligations under the Contract, Criterion has implemented appropriate systems and/or procedures to prevent a recurrence; and
 - (ii) Criterion is capable of resuming performance of the relevant Services; and
 - (iii) The Customer shall be entitled to terminate this Agreement or the affected Services on not less than 90 days' written notice to Criterion.

12.11 **Non-solicitation:** If prior to the Commencement Date or during the supply of the Services, the Customer wishes to engage an officer, employee, agent or subcontractor of Criterion directly or through a third party, the Customer acknowledges that Criterion reserves the rights to charge the Customer a fee in connection with the engagement. Further and/or in the alternative, the parties may agree an extension to the Term (as defined in the Schedules to these Terms & Conditions) of the Contract, at the end of which Criterion's officer, employee, agent or subcontractor may be engaged directly by the Customer or through a third party without further charge to the Customer. In addition to the foregoing, Criterion will be entitled to charge a fee to the Customer if the Customer introduces Criterion's officer, employee, agent or subcontractor to a third party who subsequently engages Criterion's officer, employee, agent or subcontractor within a period of twelve months from date on which the Contract is terminated.

- 12.12 **Data protection:** The parties shall observe and comply with the relevant obligations of the Data Protection Act 1998 or any re-enactment thereof.
- 12.13 **Complaints and dispute resolution procedure:** Criterion is committed to providing the highest standard of customer service to Customers. In the unlikely event of a Customer complaint, Criterion will ensure the Customer complaint is dealt with quickly and fairly, and in accordance with the following:
- (a) A Customer complaint can be raised:
 - (i) Via the form available on the Criterion website;
 - (ii) Via Telephone by calling Criterion on 01202 848866 and speaking to the Customer's account manager;
 - (iii) Via e-mail to the Customer's account manager;
 - (iv) In writing at Criterion's address as set out above.
 - (b) A Customer complaint must include the Customer's account number and detail of the circumstances of the complaint.
 - (c) Criterion will investigate all Customer complaints promptly upon receipt.
 - (d) If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it ("**Dispute**"), or in connection with any Customer complaint, the parties shall follow the procedure set out in this clause 12.13:
 - (i) 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 [Manager] of Criterion and the Customer shall attempt in good faith to resolve the Dispute;
 - (ii) If the [Manager] of Criterion and the Customer are for any reason unable to resolve the Dispute within 20 Business Days of service of the Dispute Notice, the Dispute shall be referred to the Managing Director of Criterion who shall attempt in good faith to resolve it with the Customer; and
 - (iii) If the Managing Director of Criterion and the Customer are for any reason unable to resolve the Dispute within 20 Business 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 Solve. 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 Solve. The mediation will start not later than 20 Business Days days after the date of the ADR notice.
 - (e) No party may commence any court proceedings in relation to the whole or part of the Dispute until 20 Business Days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
 - (f) If the Dispute is not resolved within 20 Business 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 20 Business Days, or the mediation terminates before the expiration of the said period of 20 Business Days, the Dispute shall be finally resolved by the courts of England and Wales.
- 12.14 **Governing law and jurisdiction:** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or

claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

