

Technical Health – General Terms and Conditions

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1. Interpretation

The definitions and rules of interpretation in this condition apply in these terms and conditions.

1.1 Definitions:

Confidential information: all confidential information disclosed by a party to the other party in connection with Contract, including but not limited to:

- (a) the terms of this agreement;
- (b) any information that would be regarded as confidential by a reasonable business person relating to:
- (c) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party; and
- (d) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party.

Contract: the Supplier's Proposal and Customer's acceptance of it under condition 3.

Customer: the person, firm or company who purchases Services from the Supplier.

Customer's Contract Manager: the Customer's manager for the Contract, appointed in accordance with condition 6.1(a).

Data Protection Legislation: the General Data Protection Regulation ((EU) 2016/679) (**GDPR**) whilst still applicable in the UK and any UK national implementing laws, regulations and secondary legislation including the Data Protection Act 2018.

Deliverables: all products and materials supplied by the Supplier in in accordance with the Contract including software, data, diagrams, reports and specifications.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, 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.

Mandatory Policies: the Customer's business policies as notified to the Supplier from time to time.

Personal data, controller, processor, data subject and processing have the meanings respectively set out in the GDPR.

Proposal: the detailed plan describing the provision of the Services and Deliverables by the Supplier in accordance with the Contract.

Services: the services to be provided by the Supplier under the Contract.

Supplier: Technical Health, a trading name of Technical Health Limited (Company Number 9731974, VAT Reg No. 237 4010 37) whose registered office is at 5 Hillside Avenue, Exeter, EX4 4NW. The principal email address is George.Brighton@technicalhealth.co.uk.

Supplier's Contract Manager: the Supplier's manager for the Contract, identified in the Proposal and appointed in accordance with condition 5.4.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Condition and paragraph headings shall not affect the interpretation of this Contract.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders.

1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.7 A reference to **writing** or **written** includes email.

2. Application of conditions

2.1 These conditions shall:

- (a) apply to and be incorporated in the Contract; and
- (b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of

order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

2.3 In the event of conflict between these conditions and the Proposal, the Proposal shall prevail.

3. Effect of Proposal

3.1 Any Proposal is valid for a period of 45 days only, and the Supplier may withdraw it at any time by notice to the Customer.

3.2 The Supplier's Proposal constitutes an offer by the Supplier to provide the Services and the Deliverables specified subject to these conditions. Accordingly, the signature by the Customer, or the Supplier's commencement or execution of work pursuant to the Proposal at the request of the Customer, shall establish a contract for the supply and purchase of those Services on these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, in any communication or the Proposal shall not govern the Contract.

4. Commencement and Duration

4.1 The Contract shall commence on the Contract Start Date.

4.2 If an Initial Term is provided in the Proposal:

- (a) then it shall continue for the Initial Term, unless terminated earlier in accordance with clause 13;
- (b) the Contract shall automatically extend for 12 months ("Extended Term") at the end of the Initial Term and at the end of each Extended Term; and
- (c) either party to this Agreement may give written notice to the other party, not later than 3 months before the end of the Initial Term or the relevant Extended Term, to terminate the Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.

4.3 If no Initial Term is provided in the Proposal either party to this Agreement may give 3 months written notice to the other party to terminate the Contract.

5. Supplier's obligations

5.1 The Supplier shall supply the Services and Deliverables in accordance with the terms of the Contract.

5.2 In supplying the Services, the Supplier shall:

- (a) perform the Services with the level of care, skill and diligence in accordance with good practice in the Suppliers' industry;
- (b) co-operate with the Customer in all matters relating to the Services, and comply with all reasonable instructions of the Customer;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that it fulfils its obligations under the Contract;
- (d) ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require, and which are necessary to enable it to comply with its obligations under the Contract;
- (e) ensure that the Services and Deliverables will conform in all material respects with all descriptions and specifications set out in the Proposal and that the Deliverables shall be fit for any purpose expressly made known to the Supplier by the Customer;
- (f) carry out any appropriate testing and quality assurance in respect of any Deliverable prior to its delivery to the Customer;
- (g) provide all equipment, tools, vehicles and other items required to provide the Services;
- (h) comply with all applicable laws, statutes and regulations; and
- (i) observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises.

5.3 The Supplier shall use reasonable endeavours to meet the performance dates specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

5.4 The Supplier shall appoint the Supplier's Contract Manager who shall have authority to contractually bind the Supplier on all matters relating to the Contract. The Supplier shall use reasonable endeavours to ensure that the same person acts as the Supplier's Contract Manager throughout the Contract, but may replace him or her from time to time where reasonably necessary in the interests of the Supplier's business.

6. Customer's obligations

- 6.1 The Customer shall:
- (a) co-operate with the Supplier in all matters relating to the Contract and appoint the Customer's Contract Manager, who shall have the authority to contractually bind the Customer on matters relating to the Contract;
 - (b) provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by the Supplier;
 - (c) provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects; and
 - (d) be responsible (at its own cost) for preparing the relevant premises for the supply of the Services when filming is to take place; and
 - (e) obtain the consent and the waiver of moral rights from all those who are included in any filming or other recording.

6.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, subcontractors or employees, the Customer shall in all circumstances be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it, subject to the Supplier confirming such costs, charges and losses to the Customer in writing. Such losses shall include, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere.

6.3 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of six months after the completion of the Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or subcontractor of the Supplier. The Customer shall not be in breach of this condition 6.3 if it hires an employee or subcontractor of the Supplier as a result of a recruitment campaign not specifically targeted to any employees or subcontractors of the Supplier.

7. Change control

7.1 The Customer's Contract Manager and the Supplier's Contract Manager shall meet by video or in person at the intervals as set out in the Proposal (if any) or on 3 working days' notice, to discuss matters relating to the Contract. If either party wishes to change the scope of the Services or the Deliverables, it shall submit details of the requested change to the other in writing.

7.2 If either party requests a change to the scope or execution of the Services or the Deliverables, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any variations to the Supplier's charges arising from the change;
- (c) the likely effect of the change on the Proposal; and
- (d) any other impact of the change on the terms of the Contract.

but the Supplier expects there to be changes as the Deliverables are created and usually makes no charge for the first two changes.

7.3 If the Supplier requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.

7.4 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Proposal and any other relevant terms of the Contract to take account of the change.

7.5 If an appointment for a video recording is cancelled then the Customer shall, if the cancellation is 4 weeks in advance, only any expenses that cannot be recovered. If the cancellation is less than four weeks from the agreed date, then the Customer shall pay the agreed fee. Where the Customer wishes to alter the date of such an appointment, then subject to being re-imbursed for wasted costs, the Supplier will try and reschedule such appointments.

8. Charges and payment

8.1 Condition 8.2 shall apply if the Services are to be provided on a time-and-materials basis. condition 8.3 and condition 8.4 shall apply if the Services are to be provided for a fixed price. The remainder of this condition 8 shall apply in either case.

8.2 Where the Services are provided on a time-and-materials basis:

- (a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates as set out in the Proposal and as amended from time to time;
- (b) the Supplier shall ensure that all members of the Contract team complete time sheets recording time spent on the Contract, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 8.2(c); and
- (c) the Supplier shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 8. Any expenses, materials and third party services shall be invoiced by the Supplier at cost. Each invoice shall set out the time spent by each member of the Contract team and provide a detailed breakdown of any expenses and materials, and the relevant receipts shall be provided on request.

8.3 Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Proposal. The total price shall be paid to the Supplier in instalments as set out in the Proposal on its achieving the corresponding Contract Milestone. On achieving a Contract Milestone, the Supplier shall invoice the Customer for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in condition 8.4.

8.4 Any fixed price contained in the Proposal excludes:

- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the Contract team in connection with the Services. Such expenses, materials and third party services shall be invoiced by the Supplier at cost; and
- (b) VAT, which the Supplier shall add to its invoices at the appropriate rate.

Unless otherwise provided in the Proposal, the Customer shall pay each invoice submitted to it by the Supplier in full, and in cleared funds, within 30 days of receipt.

8.5 The Supplier reserve the right to vary any price and/or its rate schedule from time to time and may increase the Fee at its sole discretion save that such increase shall not exceed the corresponding increase over the relevant period in the CPI index.

8.6 Where there is any increase in the Supplier's costs of supplying the Services it may vary the price and will give 30 days notice of such variation. In such a case the Customer may give 30 days notice of termination and the increase will not then take effect.

8.7 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on the due date the Supplier may:

- (a) charge interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 ; and
- (b) suspend all Services and provision of Deliverables until payment has been made in full.

8.8 Time for payment shall be of the essence of the Contract.

8.9 All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

9. Intellectual Property Rights

9.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by the Supplier. The Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, non-transferable and worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties. If the Supplier terminates the Contract under condition 13.1, this licence will automatically terminate.

9.2 Where the Deliverables include video footage, the Customer has the right to utilise that footage within its organisation whether as part of an App, a presentation or a video notice board, as it thinks fit.

9.3 The Supplier's copyright notice will be added to all Deliverables and must not be removed.

10. Confidentiality and Supplier's property and compliance with policies

10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Contract. A

- party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 10.2 Subject to condition 10.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Contract.
- 10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Contract.
- 10.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction. To the extent it is legally permitted to do so, the disclosing party shall give the other party as much notice of such disclosure as possible. Where notice of disclosure is not prohibited and is given in accordance with this condition 10.4, the disclosing party shall take into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.5 The above provision of this condition 10 shall survive termination of the Contract, however arising.
- 10.6 In performing its obligations under this Contract, the Supplier shall comply with the Mandatory Policies.
- 11. Data Protection**
- 11.1 Both parties will comply with all requirements of the Data Protection Legislation which are applicable to their respective roles in connection with this Contract and/or each Statement of Work.
- 11.2 The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any relevant Personal Data to the Supplier for the duration and purposes of the Contract.
- 11.3 The parties acknowledge that the Customer is the controller and the Supplier is the processor (as defined by the Data Protection Legislation). Each of us shall ensure that the Supplier each complete a register as required by the Data Protection Legislation.
- 11.4 The Supplier shall:
- (a) act only on the Customer written instructions;
 - (b) have in place appropriate technical and organisational security measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. Such measures shall be appropriate to the harm that might result from the unauthorised or unlawful processing;
 - (c) ensure any staff who have access to the personal data are obliged to keep it confidential;
 - (d) assist the Customer to respond to an individual's request to enforce their rights of subject access, rectification, erasure and any other rights conferred by the Data Protection Legislation;
 - (e) assist the Customer (if requested) with respect to security, breach notifications, impact assessments and any investigations by a supervisory authority;
 - (f) notify the Customer without undue delay in the event of a data security breach and assist the Customer with any investigations;
 - (g) maintain and keep up to date the data processing register referred to above;
 - (h) delete or return all personal data to the Customer as requested at the end of the Contract (unless already deleted in line with the Customer retention policy); and
 - (i) submit to audits and inspections and provide the Customer with whatever information the Customer need to ensure that the Supplier is complying with its obligations under the Data Protection Legislation and inform the Customer immediately if the Supplier are asked to do something infringing the Data Protection Legislation or other law of the EU or a member state.
- 11.5 The Supplier shall not appoint a third-party sub-processor without giving the Customer prior written notice. The Supplier shall ensure that any third-party processor will enter into an agreement with the same or substantially similar terms in relation to the Data Protection Legislation.
- 11.6 If this agreement will involve or require a transfer of any personal data from one country to a country outside the country of origin and if required by applicable law, the Supplier will enter into a data transfer agreement that is consistent with the requirements of applicable law.
- 12. Limitation of liability**
- 12.1 The following provisions set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:
- (a) any breach of the Contract however arising;
 - (b) any use made by the Customer of the Services, the Deliverables or any part of them; and
 - (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 12.2 All warranties, conditions and other terms implied by statute or common law are, to the greatest extent permitted by law, excluded from the Contract.
- 12.3 Nothing in these conditions excludes the liability of the Supplier:
- (a) for death or personal injury caused by the Supplier's negligence; or
 - (b) for fraud or fraudulent misrepresentation.
- 12.4 Subject to condition 12.2 and condition 12.3:
- (a) the Supplier shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty however arising), contract, misrepresentation (whether innocent or negligent) or otherwise for loss of profits, loss of business depletion of goodwill or similar losses, loss of anticipated savings, loss or corruption of data or information, any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
 - (b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty however arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total price paid for the Services and Deliverables.
- 13. Termination**
- 13.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:
- (a) the other party fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
 - (b) the other party commits a material breach of any other term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - (c) the other party repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
 - (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.
- 13.2 Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Contract shall remain in full force and effect.
- 13.3 Termination of this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 14. Force majeure**
- 14.1 The Supplier shall not in any circumstances have any liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its

- business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation:
- (a) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party);
 - (b) failure of a utility service or transport network;
 - (c) act of God, war, riot or civil commotion;
 - (d) malicious damage;
 - (e) compliance with any law or governmental order, rule, regulation or direction; and
 - (f) accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 15. Waiver**
- 15.1 No failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16. Rights and remedies**
- 16.1 Except as expressly provided in this Contract, the rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.
- 17. Dispute Resolution Procedure**
- 17.1 If a dispute arises out of or in connection with this Contractor the performance, validity or enforceability of it (**Dispute**), then, except as expressly provided in this Contract, the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the respective Managers shall attempt in good faith to resolve the Dispute;
 - (b) if the Managers are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the respective managing directors (or their equivalents) who shall attempt in good faith to resolve it.
- 17.2 Nothing in this clause 17 shall prevent either party from commencing or continuing court proceedings in relation to the Dispute, in particular where a party wishes to seek injunctive or other equitable relief.
- 18. Severance**
- 18.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract.
- 19. Entire agreement**
- 19.1 This 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.
- 19.2 Each party acknowledges that, in entering into this 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 this Contract.
- 19.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
- 20. Assignment**
- 20.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 20.2 The Supplier may at any time assign, transfer, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 21. No partnership or agency**
- 21.1 Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

22. Third party rights

- 22.1 This Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

23. Notices

- 23.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or
 - (b) sent by email (with a copy by first class post) to the respective Manager at the address at the given in the Proposal or as may be notified by a party in accordance with this clause 23.
- 23.2 Any notice or communication shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting [or at the time recorded by the delivery service]; and
 - (c) if sent by email, at the time of transmission.
- 23.3 This condition 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.

24. Governing law

- 24.1 The parties agree that the Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction.