

CHARITY PURCHASE ORDER STANDARD TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

In these terms and conditions, the following definitions apply:

Agreement: means these Ts&Cs, the Order, the Specification and any documents referred to and/or annexed to them;

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

Charity: means the customer of the Goods and/or Services as named on the Order.

Charity Materials: means any materials provided by TRBL to the Supplier;

Charity Premises: means any TRBL premises at which the Goods are supplied and/or the Services performed;

Commencement Date: means the date from which these Ts&Cs apply as agreed by the Parties in writing;

Data Protection Legislation: means the Data Protection Act 2018, the GDPR and all applicable laws and regulations relating to the privacy, protection or processing of personal data;

Effective Commencement Date: means the date on which the Goods (if any) were provided or the Services began being provided;

Fees: means the remuneration to be received by the Supplier;

GDPR means EU General Data Protection Regulation (Regulation (EU) 2016/679); and the terms **data subject, data controller or controller, data processor or processor, process, processing, personal data** and other words or phrases that have a particular meaning under Data Protection Legislation shall have the same meaning here;

Goods: means the goods (or any part of them) or any deliverables to be provided as set out in an Order;

Insolvency Event: means any event which prevents the Supplier settling its debts or where the Supplier is declared bankrupt or any event of a similar nature;

Intellectual Property Rights: means all present and future rights conferred by statute, common law or equity in any territory in or in relation to intellectual property and related or equivalent rights in each case whether registered or unregistered and all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection as may now or in the future exist anywhere in the world;

Master Agreement: a separate, duly executed and valid written agreement entered into between the Parties that applies to the Goods and/or Services set forth in the Order and/or Specification;

Order: means a Charity purchase order;

Parties: means the Charity and the Supplier;

Personnel: means any and all persons involved in the purchase of Goods, if any, and/or the management and performance of the Services, whether employed or engaged by the Supplier, any of its subcontractors or otherwise;

Replacement Supplier: means any third party engaged by the Charity to supply the Goods and/or the Services which are the same as or similar to any or all of the Goods and/or Services provided under the Agreement following their termination or expiry in full or part;

Service Levels: means the agreed levels to which the Supplier's performance in providing the Services must adhere as agreed between the Parties in writing.

Services: means the services, to be provided by the Supplier under these Ts&Cs detailed herein and/or in any Specification;

Specification: means any specification for the Goods and/or Services as agreed in writing by the Charity;

Supplier: means the provider of the Goods and/or Services as named on the Order;

Ts&Cs: means these 'Charity Standard Purchase Order Terms and Conditions';

TUPE: means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and all other applicable laws and regulations.

Written Approval: means the Charity's written approval by the Charity directors or employees authorised to approve the Supplier's work and/or expenditure.

In these Ts&Cs, unless the context requires otherwise, 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 provision as amended or re-enacted.
- (d) Any phrase introduced by the terms including, include, in particular or a similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to writing or written includes emails.

2. ENTIRE AGREEMENT

Except as expressly set forth in a Master Agreement, this Agreement constitutes the entire agreement between the Parties regarding its subject matter and supersedes all prior written or oral arrangements, agreements and understandings and any previously issued terms and conditions of purchase or supply regarding that subject matter.

The Supplier accepts this is a non-exclusive arrangement and that the Charity is free to engage any other supplier even if goods and/or services are of a similar nature.

3. COMMENCEMENT AND TERM

The Agreement will commence on the date specified in the Order or Specification and will continue for the duration as set out therein, or if not specified, until delivery of the Goods or completion of the Services, unless terminated in accordance with these Ts&Cs.

4. PURCHASE OF GOODS

Where relevant, in consideration for the Fees the Supplier shall supply and the Charity agrees to purchase the Goods.

The Supplier will allocate suitable Personnel with appropriate levels of skill, expertise, experience and seniority to perform tasks assigned to them in sufficient number to ensure that the Supplier's obligations are fulfilled.

The Supplier represents, warrants and undertakes that the Goods shall:

- (a) correspond with their description and any applicable Specification;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Charity and in this respect the Charity relies on the Supplier's skill and judgment;
- (c) be free from defects in design, material, workmanship, and (if relevant) installation and remain so for twelve (12) months (or such other period agreed by the Parties in writing) after delivery;
- (d) not infringe the Intellectual Property Rights of any third party;
- (e) obtain and at all times maintain all necessary licences, permissions, authorisations, consents and permits that it needs to carry out its obligations;

The Supplier shall comply with all applicable statutory and regulatory requirements and laws including those relating to manufacture, labelling, packaging, storage, handling and safety. Where applicable, the Supplier shall use the best quality goods, materials, standards and techniques, and ensure that the Goods and materials supplied and used or transferred to the Charity. If the Supplier is not the manufacturer of the Goods, the Supplier shall use all reasonable endeavours to transfer to the Charity the benefit of any warranty or guarantee given to the Supplier in respect of the Goods.

The Charity shall have the right to inspect and test the Goods at any time before and/or after their delivery. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Agreement.

Where applicable:

- (a) the Supplier shall provide, and hereby grants to the Charity without further payment a royalty-free, perpetual, irrevocable, licence to use any software necessary for the operation of the Goods;
- (b) the Supplier agrees that it will continue to have the full right and title to license such software to the Charity and that the Charity shall be entitled to grant third parties the right to use such software in connection with the use of the Goods, including a right to grant such a licence to any person acquiring the Goods from the Charity; and
- (c) any software provided by the Supplier shall be of satisfactory quality and free from malware, time locks or anything else that would impair performance of the software as it might reasonably be expected to operate.

5. DELIVERY

The Supplier shall deliver the Goods on the dates and to the delivery location specified in the Order ("**Delivery Location**") or otherwise as agreed in writing by the Parties. Time shall be of the essence in relation to the dates for supply of the Goods;

Where applicable:

- (a) the Supplier shall, without further charge to the Charity, install the Goods at the premises at which the Goods shall be used and subject the Goods to standard installation and testing;
- (b) if the Goods do not pass such tests, the Supplier will (without affecting the Charity's other rights and remedies) promptly and at the Supplier's expense carry out all necessary remedial work and re-submit the Goods;

6. TITLE AND RISK

Title and risk in the Goods shall pass to the Charity on completion of delivery at the Delivery Location.

Where applicable, if payment for the Goods is made before delivery, ownership of the Goods shall pass to the Charity once payment has been made but risk in the Goods shall remain with the Supplier until completion of delivery.

7. SUPPLY OF SERVICES

The Supplier shall provide the Services in accordance with the terms of the Agreement. In providing the Services, the Supplier warrants and represents that it shall:

- (a) perform the Services in accordance with the performance dates agreed by the Parties in writing or the Specification or notified to the Supplier by the Charity and time shall be of the essence;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use Personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the terms of the Agreement;
- (d) ensure the Services including any Goods will conform with all descriptions and specifications provided, and that the Goods shall be fit for any purpose expressly or impliedly made known to the Supplier by the Charity;
- (e) where requested by the Charity, deliver reports on the performance of the Services to a Charity representative;
- (f) not do or omit to do anything which may cause the Charity to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;
- (g) not do or omit to do anything which may directly or indirectly damage the reputation and/or brand and/or image of the Charity;
- (h) where applicable, ensure that a suitable disaster recovery and business continuity plan is in place and shall at the Charity's request provide a copy.

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8. TRBL REMEDIES

If the Goods are not delivered on the date they are due or do not comply with the Agreement at any time on or after delivery, or if the Supplier fails to perform the Services in accordance with the Agreement, including delivery of the Services by the performance dates then, without limiting any of its other rights or remedies, the Charity shall have the right to any one or more of the following remedies;

- (a) to terminate this Agreement with immediate effect by giving written notice to the Supplier;
- (b) to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense and a full refund of the price of the rejected Goods including any deposit (if paid) shall be made by the Supplier to the Charity;
- (c) to require the Supplier, at the Supplier's sole cost and expense, to promptly repair or replace the defective Goods;
- (d) to require the Supplier, at the Supplier's sole cost and expense, to promptly remedy the Services, or require the Supplier to provide a full refund of the Fees for the Services (including any deposit) within seven (7) Business Days;
- (e) to recover from the Supplier any costs and expenses incurred by the Charity in obtaining substitute goods and/or services from a third party.

These provisions shall survive termination of the Agreement.

9. CHARITY PREMISES

Where Services are performed at and/or Goods are delivered to the Charity Premises, the Supplier and its Personnel shall comply with any and all the Charity policies and carry out their duties and conduct themselves whilst on the Charity Premises with all reasonable care and skill and in compliance with best, environmental, computing, security and health and safety practice.

10. FEES AND PAYMENT

The Fees shall be agreed in writing in advance of any Goods being supplied or Services provided and shall be the full and exclusive remuneration of the Supplier in respect of the purchase of the Goods and/or the performance of the Services.

No increase in the Fees may be made either for the Goods or Services without the prior Written Approval of the Charity.

If the Charity disputes any invoice or other statement of monies due, the Charity shall, as soon as practicable notify the Supplier in writing. The Parties shall negotiate in good faith to attempt to resolve the dispute promptly.

The Charity shall pay correctly rendered invoices that are not subject to dispute, within thirty (30) Business Days after the end of the month of receipt of the invoice. Payment shall be made to the bank account nominated by the Supplier.

All amounts payable by the Charity under the Agreement are exclusive of amounts in respect of value added tax chargeable for the time being ('VAT').

The Supplier shall and shall ensure that its Personnel shall maintain complete and accurate records of the time spent and materials used in providing the Goods and/or Services, and shall allow the Charity to inspect such records at all reasonable times on request.

The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Charity in order to justify withholding payment of any such amount in whole or in part. The Charity may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the Charity to the Supplier.

11. CONFIDENTIALITY

A Party ('Receiving Party') shall keep in strict confidence all that a reasonable person in the position of the recipient would understand to be confidential which is disclosed to the Receiving Party by the other Party ('Disclosing Party'), its officers, employees, agents, professional advisers or subcontractors.

The Receiving Party shall only disclose such confidential information to:

- (a) those of its employees, agents or subcontractors who need to know the same for the purpose of discharging or exercising the Receiving Party's rights or obligations under the Agreement, and shall ensure that such employees, agents or subcontractors shall keep such information confidential; and
- (b) as may be required by law, court order or any governmental or regulatory authority.

No announcement or publicity concerning the Agreement or any matter ancillary to the Agreement shall be made by the Supplier without the prior Written Approval of the Charity.

This provision shall survive the termination of the Agreement.

12. AUDIT

The Supplier shall keep and maintain for seven (7) years after this Agreement has terminated, or as long a period as may be agreed between the Parties, full and accurate accounts and records concerning the subject matter of the Agreement.

The Supplier and, where applicable, any subcontractor shall on request afford the Charity, the Charity's representatives or the charity regulators such access to those records as may be reasonably requested by the Charity in connection with the Agreement.

Where the Charity allows the subcontracting of Services or the provision of Goods, the Supplier shall ensure that any subcontractor complies with the Supplier's obligations herein.

This provision shall survive the termination of the Agreement.

13. INTELLECTUAL PROPERTY RIGHTS

The Supplier warrants and represents that it has full, clear and unencumbered title to the Goods supplied to the Charity, and that at the date of delivery of such items to the Charity, the Supplier will have full and unrestricted rights to supply all such items. The Supplier warrants and represents that the Services including the Goods will not infringe the Intellectual Property Rights of any third party.

The Supplier assigns to the Charity with full title guarantee and free from all third party rights all present and future Intellectual Property Rights in the Goods.

The Supplier shall (where applicable) obtain waivers of all moral rights in the Goods to which any individual is now or may be at any future time be entitled .

All the Charity Materials and without limitation any other Intellectual Property supplied by the Charity to the Supplier shall at all times be and remain the exclusive property of the Charity, and shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Charity and shall not be disposed of or used other than in accordance with the Charity's Written Approval. The Supplier shall at the Charity's discretion either: (i) destroy; or (ii) return all copies of any such materials to the Charity immediately on the Charity's first written request.

the Charity grants the Supplier a limited royalty free, revocable, non-exclusive and non-transferable licence to use the Charity Materials to the extent necessary to provide the Goods and/or perform the Services for the Term.

14. DATA PROTECTION

The Supplier agrees to comply with Data Protection Legislation.

In the absence of prior Written Approval from the Charity, any legal rights arising in respect of data including personal data obtained, created, compiled or processed by the Supplier or any Personnel, agent or sub-contractor of the Supplier under the Agreement in the course of performing the Services; or exclusively for the purpose of performing the Services shall, to the extent legally possible, vest in the Charity and the Supplier hereby assigns with full title guarantee absolutely to the Charity any right or title it may have over such data.

Where data or information is supplied to the Charity by the Supplier or by any third parties acting under the Supplier's instructions, the Supplier warrants and represents that such data and/or information is and shall be accurate, of high quality and suitable for the purposes requested by the Charity and that such data and/or information was and/or shall be obtained, produced or compiled in accordance with Data Protection Legislation.

The Supplier agrees to indemnify the Charity and hold the Charity harmless from any loss, damage or expense incurred by the Charity arising out of any breach of this clause.

The provisions of this clause shall survive termination of the Agreement.

15. WARRANTIES

The Supplier represents and warrants that:

- (a) it has the authority to enter into the Agreement and its obligations under it are legally binding;
- (b) since, as a charity, the Charity's reputation is of paramount importance, the Supplier has not and will not knowingly act in any way in the delivery of the Goods or provision of the Services which materially damages the Charity's reputation;
- (c) it fully complies with all relevant legislation and in particular Data Protection Legislation.

The Charity represents and warrants that it has the authority to enter into the Agreement and its obligations under it are legally binding.

16. INDEMNITY AND INSURANCE

The Supplier shall keep the Charity indemnified in full against all reasonable costs, expenses and direct damages and direct losses including any reasonable interest, penalties, fines, legal and other reasonable professional fees and expenses awarded against or incurred or paid by the Charity as a result of or in connection with:

- (a) any claim made against the Charity by a third party arising out of, or in connection with, the supply of the Goods and/or Services (save to the extent due to the fault of the Charity, a the Charity subsidiary or a the Charity supplier);
- (b) any claim brought against the Charity for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, receipt, supply or use, of the Goods and/or the Services;
- (c) any claim brought against the Charity for actual or alleged infringement of Data Protection Legislation;
- (d) any breach of its obligations set out in the Agreement by its subcontractors and/or agents;
- (e) any misuse of the Charity's Intellectual Property Rights by the Supplier or any of its Personnel and/or subcontractors;
- (f) defective workmanship, quality or materials in or in relation to the supply of the Goods and/or the Services.

While these Ts&Cs remain in force and for a period of one (1) year thereafter, the Supplier shall maintain with a reputable insurance company such insurance to cover any heads of liability as may arise under or in connection with the Agreement and shall, at the Charity's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

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This provision shall survive termination of the Agreement.

17. TERMINATION

The Charity shall be entitled to cancel for convenience any delivery of Goods (or part thereof), and any related Services on two (2) Business Day's notice, prior to dispatch unless the Supplier can reasonably demonstrate that it has already purchased the Goods from a third party or has already customised the Goods for the Charity. The Charity shall be entitled to terminate for convenience any performance of Services (or part thereof), subject to payment of a fair and reasonable proportion of the Fees which cannot reasonably be avoided or mitigated, incurred by the Supplier in connection with the Services terminated prior to their provision. Such compensation shall not include loss of anticipated profits or any consequential loss.

Without limiting its other rights or remedies, the Charity may terminate this Agreement with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material or persistent breach of this Agreement and (if such a breach is remediable) fails to remedy that breach within fourteen (14) Business Days of receipt of notice in writing of the breach;
- (b) the Supplier is affected by an Insolvency Event or in the Charity's reasonable opinion is likely to be affected by an Insolvency Event;
- (c) the Supplier suffers a material adverse change to its reputation and/or status which, in the reasonable opinion of the Charity, makes it inappropriate for the Supplier to continue to provide the Goods and/or Services.

Without limiting its other rights or remedies, the Charity may terminate this Agreement by giving the Supplier one (1) month's written notice at any time during the Term.

18. CONSEQUENCES OF TERMINATION

On termination of this Agreement for any reason:

- (a) the Supplier shall immediately return all the Charity Materials;
- (b) the accrued rights, remedies, obligations and liabilities of the Parties as at termination shall not be affected, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination;
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect; and
- (d) the Supplier shall co-operate fully with the Charity to ensure an orderly migration of Goods and/or the Services to the Charity or, at the Charity's request, a Replacement Supplier and shall provide any information or documentation reasonably required to do so.

19. LIABILITY

Nothing in the Agreement shall exclude or in any way limit either Party's liability for fraud, or for death or personal injury caused by its negligence, for any other liability to the extent such liability may not be excluded or limited as a matter of law or for any liability arising under any indemnity given by the Supplier under the Agreement. Subject to the foregoing:

- (a) The Charity's maximum aggregate liability under or in connection with the Agreement, whether in contract, tort (including negligence) or otherwise, will in no circumstances exceed the total Fees payable to the Supplier in the twelve (12) months prior to the date of the loss or damage first occurring or one hundred and fifty thousand pounds (£150,000) whichever is the greater;
- (b) The Supplier's maximum aggregate liability under or in connection with the Agreement whether in contract, tort or otherwise, will in no circumstances exceed the total Fees paid by the Charity in the twelve (12) months prior to the date of the loss or damage first occurring or one hundred and fifty thousand pounds (£150,000) whichever is the greater save in the event of a breach of Data Protection Legislation or a breach of Intellectual Property Rights when the Supplier's liability shall be unlimited;
- (c) Neither Party will be liable under the Agreement for any loss of actual or anticipated income or profits, loss of contracts, damage to goodwill or reputation; or special, indirect or consequential loss or damage of any kind.

20. NO EMPLOYMENT RELATIONSHIP

The relationship of the Supplier to the Charity will be that of independent contractor and nothing in this Contract shall render it (nor any Personnel) an employee, worker, agent or partner of the Charity and the Supplier shall not hold itself out as such and shall procure that its Personnel shall not hold themselves out as such. The Agreement constitutes an agreement for the provision of goods and/or services and not an agreement of employment. The Supplier shall be fully responsible for and shall indemnify and shall keep indemnified the Charity for and in respect of payment of income tax, national insurance contributions or any other such taxes and/or charges relating to any Personnel.

The Supplier shall ensure that the Services are carried out in such a manner that no Personnel will transfer to the employment of the Charity or any Replacement Supplier on termination or expiry of this Agreement pursuant to TUPE or otherwise.

The Supplier shall indemnify the Charity and any Replacement Supplier against any reasonable costs, awards, expenses and liabilities which either of them may incur (including reasonable legal fees) arising from any claims, demands and proceedings brought against the Charity and/or any Replacement Supplier in connection with TUPE.

21. EXPORT CONTROLS

The Supplier acknowledges and agrees that software licensed under the Agreement may be subject to restrictions and controls imposed by the United Kingdom Export Control Order, the United States Export Administration Act, the regulations thereunder and similar laws in other jurisdictions and the Supplier agrees to comply with all applicable export and re-export control laws and regulations.

22. FORCE MAJEURE

Neither Party shall be liable to the other for any delay or failure in performing its obligations under the Agreement to the extent that: (i) such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that Party, and which by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable (a 'Force Majeure Event').

23. NON-SOLICITATION

During the Term and for six (6) months after its termination or expiry, the Supplier shall not solicit to enter into a contract for service or a contract of employment (whether directly or indirectly) with any employees of the Charity who have been directly involved in the procurement and/or ongoing provision of the Services or Goods or otherwise connected with the Agreement during the six (6) months prior to such solicitation.

This provision shall survive termination of the Agreement.

24. ASSIGNMENT AND SUBCONTRACTING

The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement without the Charity's prior Written Approval.

25. BRIBERY

The Supplier shall not:

- (a) offer or agree to give any person working for or engaged by the Charity any gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to the Agreement; nor
- (b) enter into the Agreement if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for the Charity by or for the Supplier.

If the Supplier (including any of its employees, agents or subcontractors, in all cases whether or not acting with the Supplier's knowledge) breaches (a) above or the Prevention of Corruption Acts 1889 to 1916 in relation to the Agreement or any other agreement with the Charity, the Charity may terminate the Agreement by written notice with immediate effect and/or recover any loss resulting from the termination from the Supplier.

26. MODERN SLAVERY

In performing its obligations under the Agreement, the Supplier shall comply and ensure its subcontractors comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including, but not limited to, the Modern Slavery Act 2015.

27. GENERAL

Notice. Any notice or other communication required to be given to a Party under or in connection with the Agreement shall be in writing and delivered to the other Party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office. Formal notices of termination and/or impending litigation may not be served by email and in the case of delivery to the Charity must be copied to the legal department.

Waiver. A waiver of any right under the Agreement 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 this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise.

Severance. If a court or any other competent authority finds that any provision (or part of any provision) of the Agreement 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 Agreement shall not be affected.

No partnership. Nothing in the Agreement 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.

Third parties. Except as expressly provided in these Ts&Cs a person who is not a party to the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

Variation. Any variation to the Agreement, including the introduction of any additional terms, shall only be binding when agreed in writing and signed by both Parties.

Non-reliance. The Supplier acknowledges that, in entering into the Agreement the Supplier has not relied on the Charity's statements, representations, assurances and warranties (whether made innocently or negligently) unless expressly set out herein and that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement herein.

28. GOVERNING LAW AND JURISDICTION

The Agreement 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 the law of England and Wales and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.