

Standard Terms and Conditions of Purchase

1 Interpretation

1.1 In these Terms and Conditions, the following definitions apply:

"Agreement" means the contract between apetito and the Supplier for the supply of Goods and/or Services in accordance with these Terms and Conditions and any Special Terms, Purchase Order, SLA, or Specification.

"apetito" means Apetito Limited, a company incorporated and registered in England and Wales with company number 233851 whose registered office is at Canal Road, Trowbridge, Wiltshire, BA14 8RJ.

"apetito Property" has the meaning set out in clause 5.3.10.

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

"Change of Control" means:

- (i) control (as the same is defined by section 1124 of the Corporation Tax Act 2010) of the Supplier is acquired by a single person (or a number of persons acting in concert) other than the person or persons who control the Supplier at the date of the Agreement (any change which enables one or more person(s) who currently control the Supplier to acquire such control from all those who currently control the Supplier being deemed to be a change of control) but does not include any internal re-organisation or bona-fide reconstruction within the Supplier's group; or
- (ii) any person (or a number of persons acting in concert) becoming a shareholder in the Supplier holding 25% or more of the shares in the Supplier other than the person or persons who, as at the date of this Agreement, are shareholders of the Supplier.

"Commencement Date" has the meaning set out in clause 2.2.

"Confidential Information" means all information which has been designated as confidential by either party in writing or which is of a confidential nature including information which relates to the business, affairs, property, assets, trading practices, trade secrets, Intellectual Property Rights, specifications, technical or commercial know-how, personnel, customers, or supplier of either party. Information is not Confidential Information if it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Receiving Party or its representatives (except that any compilation of otherwise public information in a form not publicly known shall still be treated as Confidential Information).

"Deliverables" means all documents, products and materials developed by the Supplier or its agents, contractors, and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, reports and specifications and reports (including drafts).

"Goods" means the goods (or any part of them) set out in the Purchase Order, the Special Terms, or any Specification.

"Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trademarks, 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 rights, topography 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 and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future, in any part of the world.

"Purchase Order" means apetito's purchase order for the supply of Goods and/or Services.

"Services" means the services, including any Deliverables, to be provided by the Supplier under the Agreement as set out in the Purchase Order, the Special Terms, or any Specification.

"SLA" means any service levels relating to the provision of Goods and/or Services agreed in writing by apetito and the Supplier which form part of the Agreement.

"Special Terms" means any bespoke terms agreed in writing between apetito and the Supplier which form part of the Agreement.

"Specification" means any description or specification for the Goods and/or Services (including any relevant plans or drawings) that is agreed in writing by apetito and the Supplier.

"Supplier" means the person from whom apetito purchases the Goods and/or Services.

"Terms and Conditions" means these standard terms and conditions as amended from time to time in accordance with clause 21.7.

1.2 In these Terms and Conditions, the following rules apply:

- 1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.3 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;
- 1.2.4 a reference to a month or year shall be a reference to a calendar month or year;
- 1.2.5 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
- 1.2.6 a reference to **writing** or **written** includes faxes.

2 Basis of Contract

2.1 The Purchase Order constitutes an offer by apetito to purchase Goods and/or Services from the Supplier in accordance with these Terms and Conditions.

2.2 The Purchase Order shall be deemed to be accepted on the earlier of:

- 2.2.1 the Supplier issuing written acceptance of the Purchase Order; or
- 2.2.2 any act by the Supplier consistent with fulfilling the Purchase Order; or
- 2.2.3 the execution of any Special Terms,

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at which point and on which date the Agreement shall come into existence ("**Commencement Date**").

- 2.3 These Terms and Conditions apply to the Agreement to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice, or course of dealing.
- 2.4 This Agreement shall represent the entire agreement between the parties upon which the Services and/or Goods are to be provided. This Agreement extinguishes and supersedes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral relating to its subject matter, save where "**Special Terms**" apply.
- 2.5 All of these Terms and Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

3 Supply of Goods

- 3.1 The Supplier shall ensure that the Goods shall:
 - 3.1.1 correspond with their description and/or any Specification or applicable SLA;
 - 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by apetito, expressly or by implication, and in this respect apetito relies on the Supplier's skill and judgement;
 - 3.1.3 where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery (save where a longer warranty period is agreed); and
 - 3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling, and delivery of the Goods.
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement in respect of the Goods.
- 3.3 apetito shall be entitled to inspect the Supplier's premises upon apetito giving the Supplier reasonable written notice. Such inspections shall be for the purpose of testing whether the Goods (or any quantity of them) are being supplied in accordance with the Agreement and are of satisfactory quality. An inspection can take place, once notice is given, at any time during normal working hours. The right to inspect shall include the premises of any contractors, sub-contractors or agents of the Supplier who are carrying out any part of the manufacturing and/or supply of the Goods, including the packing, labelling, storing or delivery of the Goods (or any quantity of Goods).
- 3.4 If, following such inspection or testing, apetito considers that the Goods do not conform or are unlikely to conform with the Supplier's obligations in clause 3.1, apetito shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure such conformity.
- 3.5 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, and apetito shall have the right to conduct

further inspections and testing after the Supplier has carried out its remedial actions.

4 Delivery of Goods

- 4.1 The Supplier shall ensure that:
 - 4.1.1 it complies with an applicable SLA in relation to the supply of the Goods;
 - 4.1.2 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - 4.1.3 each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of Goods (including, where applicable, the code number of the Goods), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - 4.1.4 if the Supplier requires apetito to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier unless agreed otherwise in writing.
- 4.2 The Supplier shall deliver the Goods:
 - 4.2.1 on the date specified in the Purchase Order or, if no such date is specified, then within the period specified in the Purchase Order;
 - 4.2.2 to apetito's premises at Canal Road, Trowbridge, Wiltshire, BA14 8RJ or such other location as is set out in the Purchase Order or delivery schedule or as instructed by apetito before delivery ("**Delivery Location**"); and
 - 4.2.3 during apetito's normal hours of business on a Business Day, or as instructed by apetito.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 If the Supplier:
 - 4.4.1 delivers less than 100 per cent of the quantity of Goods ordered, apetito may reject the Goods; or
 - 4.4.2 delivers more than 100 per cent of the quantity of Goods ordered, apetito may at its sole discretion reject the excess Goods,and any rejected Goods shall be returnable at the Supplier's risk and expense.
- 4.5 The Supplier shall not deliver the Goods in instalments without apetito's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle apetito to the remedies set out in clause 6.1.
- 4.6 Title and risk in the Goods shall pass to apetito on completion of delivery.
- 4.7 The time for delivery of the Goods shall be of the essence.

5 Supply of Services

- 5.1 The Supplier shall from the date set out in the Purchase Order and for the duration of the Agreement provide the Services to apetito in accordance with the terms of the Agreement.
- 5.2 The time for completion or delivery of the Services shall be of the essence. The Supplier shall meet any performance dates for the Services specified in the Purchase Order or notified to the Supplier by apetito.
- 5.3 In providing the Services, the Supplier shall:
- 5.3.1 cooperate with apetito in all matters relating to the Services, and comply with all instructions of apetito;
 - 5.3.2 perform the Services with the best care, skill, and diligence in accordance with the best practice in the Supplier's industry, profession, or trade;
 - 5.3.3 perform the Services in accordance with any SLA or Specification;
 - 5.3.4 use personnel who are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
 - 5.3.5 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by apetito;
 - 5.3.6 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - 5.3.7 use the best quality goods, materials, standards, and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to apetito, will be free from defects in workmanship, installation, and design;
 - 5.3.8 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws, statutes, codes, and regulations from time to time in force;
 - 5.3.9 observe all health and safety rules and regulations and any other security requirements that apply at any of apetito's premises;
 - 5.3.10 hold all materials, equipment and tools, drawings, specifications, and data supplied by apetito to the Supplier ("**apetito Property**") in safe custody at its own risk, maintain apetito Property in good condition until returned to apetito, and not dispose of use apetito Property other than in accordance with apetito's written instructions or authorisations; and
 - 5.3.11 not do or omit to do anything which may cause apetito to lose any licence, authority, consent, or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that apetito may rely or act on the Services.
- 5.4 A party may request changes to the Services (whether by way of removal of Services, the addition of new Services, or specifying the order in which the Services are being performed or the location at which the Services are to be provided) ("**Variation**") by giving reasonable written notice to the other ("**Variation Notice**"). The Variation (including any change in price) shall not be effective unless agreed in writing by apetito and the Supplier. In the event the parties cannot agree the terms of the Variation within 30 days of the

Variation Notice, apetito shall have the right to terminate the Agreement by giving the Supplier 30 days' written notice.

- 5.5 apetito shall be entitled to inspect the Supplier's premises upon apetito giving the Supplier reasonable written notice. Such inspections shall be for the purpose of testing whether the Services are being supplied in accordance with the Agreement and whether any Deliverables are of satisfactory quality. An inspection can take place, once notice is given, any time during normal working hours. The right to inspect shall include the premises of any contractors, sub-contractors or agents of the Supplier who are carrying out any part of the provision of the Services, including any Deliverables.
- 5.6 If, following such inspection or testing, apetito considers that the Services do not conform or are unlikely to conform with the Supplier's obligations in clause 5.3, apetito shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure such conformity.
- 5.7 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Services and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Agreement, and apetito shall have the right to conduct further inspections and testing after the Supplier has carried out its remedial actions.

6 apetito Remedies

- 6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, apetito shall, without limiting its other rights or remedies, have one or more of the following rights:
- 6.1.1 to terminate the Agreement with immediate effect by giving written notice to the Supplier;
 - 6.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
 - 6.1.3 to recover from the Supplier any costs incurred by apetito in obtaining substitute Goods and/or Services from a third party;
 - 6.1.4 where apetito has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
 - 6.1.5 to claim damages for any additional costs, loss or expenses incurred by apetito which are in any way attributable to the Supplier's failure to meet such dates.
- 6.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies, apetito shall have one or more of the following rights, whether or not it has accepted the Goods:
- 6.2.1 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
 - 6.2.2 to terminate the Agreement with immediate effect by giving written notice to the Supplier;
 - 6.2.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - 6.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 6.2.5 to recover from the Supplier any expenditure incurred by apetito in obtaining substitute Goods from a third party; and

6.2.6 to claim damages for any additional costs, loss or expenses incurred by apetito arising from the Supplier's failure to supply Goods in accordance with clause 3.1.

6.3 These Terms and Conditions shall extend to any substituted or remedial services and/or repairs, or replacement Goods supplied by the Supplier.

6.4 apetito's rights under the Agreement are in addition to (and not exclusive of) any rights and remedies implied by statute and common law.

7 apetito's Obligations

7.1 apetito shall:

7.1.1 provide the Supplier with reasonable access at reasonable times to apetito's premises for the purpose of providing the Services; and

7.1.2 provide such information as the Supplier may reasonably request for the provision of the Services and which apetito considers reasonably necessary for the purpose of providing the Services.

8 Charges and Payment

8.1 The price for the Goods:

8.1.1 shall be the price set out in the Purchase Order, or if no price is quoted, such price as is reasonable provided it shall not be higher than the price set out in the Supplier's published price list in force at the Commencement Date; and

8.1.2 shall be inclusive of the costs of packaging, insurance, and carriage of the Goods, unless otherwise agreed in writing by apetito. No extra charges shall be effective unless agreed in writing and signed by apetito.

8.2 The charges for the Services shall be set out in the Purchase Order and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by apetito, the charges shall be inclusive of every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services. No extra charges shall be effective unless agreed in writing and signed by apetito.

8.3 In respect of Goods, the Supplier shall invoice apetito on or at any time after completion of delivery. In respect of Service, the Supplier shall invoice apetito on or at any time after completion of the Services. Each invoice must quote the Purchase Order number, be accompanied by a signed delivery note (if applicable) and sent to the address specified by apetito.

8.4 In consideration of the supply of Goods and/or Services by the Supplier, apetito shall pay the invoiced amounts within 28 days net from the end of the month in which the date of the invoice falls, following receipt of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

8.5 All amounts payable by apetito under the Agreement are, unless stated otherwise in the Special Terms inclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Agreement by the Supplier to apetito, apetito shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or

Services at the same time as payment is due for the supply of the Goods and/or Services.

8.6 If apetito fails to pay any amount properly due and payable by it under the Agreement, the Supplier shall give notice to apetito of the overdue payment together with all supporting information apetito may reasonably require. Such notice may state the Supplier's intention to charge interest if the overdue amount is not paid within 30 days of the date of the notice ("**Reminder Notice**"). If apetito raises a bona-fide dispute on an invoice, it may withhold payment of such invoice provided the matter is raised within 60 days of receipt of the invoice and the dispute is referred to the Dispute Resolution Procedure set out in clause 20. Any part of a valid invoice which is undisputed shall be payable notwithstanding a disputed element of the same invoice.

8.7 On the expiry of the Reminder Notice and provided apetito has not raised a bona-fide dispute, the Supplier shall have the right to charge interest on the overdue amount at the rate of one per cent per annum above the base rate for the time being of Lloyds Bank Plc accruing on a daily basis from the date of expiry of the Notice to the date of actual payment, whether before or just after judgement. The Supplier shall not have the right to charge interest on payments that apetito disputes in good faith.

8.8 The Supplier shall maintain until six years after the final payment of all sums due under this Agreement, full and accurate records in relation to the provision of the Services including expenditure reimbursed by apetito and all payments made by apetito. The Supplier shall allow apetito or its agents to inspect such records at all reasonable times on request.

8.9 apetito may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by apetito to the Supplier under the Agreement.

9 Intellectual Property Rights

9.1 In respect of the Goods and any goods that are transferred to apetito as part of the Services under this Agreement, including the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to apetito, it will have full and unrestricted rights to sell and transfer all such items to apetito.

9.2 Unless agreed otherwise in writing by apetito and the Supplier, the Supplier assigns to apetito, with full title guarantee and free from all third-party rights, all Intellectual Property Rights in the products of the Services including the Deliverables.

9.3 Unless agreed otherwise in writing by apetito and the Supplier, the Supplier shall obtain waivers of all moral rights in the products, including the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

9.4 Unless agreed otherwise in writing by apetito and the Supplier, the Supplier shall, promptly at apetito's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as apetito may from time to time require for the purpose of securing for apetito the full benefit of the Agreement,

including all rights, title, and interest in and to the Intellectual Property Rights assigned to apetito in accordance with clause 9.2.

9.5 The use by the Supplier of any Intellectual Property Rights belonging to apetito shall be limited solely to performance of the Agreement and strictly in accordance with apetito's instructions. Any Goods or Deliverables bearing to apetito's Intellectual Property Rights shall be submitted to apetito for approval before use. Where requested, the Supplier shall provide to apetito a sample of any Goods or Deliverables bearing apetito's Intellectual Property Rights before such consent may be given. The Supplier shall not sub-license, transfer or otherwise deal with the rights of use of apetito's Intellectual Property Rights granted under the Agreement.

9.6 All apetito Property, including but not limited to Intellectual Property, is the exclusive property of apetito.

10 Disaster Recovery and Business Continuity

10.1 Notwithstanding clause 17 (Force Majeure), throughout the term of the Agreement, the Supplier shall maintain in place a comprehensive business continuity and disaster recovery plan which, when activated, is designed to allow the Supplier to continue provision of the critical elements of its obligations under the Agreement (whether from the Supplier's own facilities or a business continuity and disaster recovery facility) within 24 hours of the incident causing the business continuity and disaster recovery plan to be put into effect. If the Supplier is unable to supply the Goods and/or Services in accordance with the Agreement from its own facilities because of a valid Force Majeure Event pursuant to clause 17, it shall supply the Goods and/or Services from such alternative premises as may be agreed in advance in writing by apetito.

10.2 Any business continuity and disaster recovery plan that the Supplier has, must accord with BCI (Business Continuity Institute) Good Practice Guidelines 2018 as amended from time to time. Where the business continuity and disaster recovery plan rely upon services to be provided by a third-party business continuity and disaster recovery provider, such third party must be a reputable provider of business continuity and disaster recovery services.

10.3 The business continuity and disaster recovery plan referred to in clause 10.1 will be developed and updated from time to time by the Supplier and the Supplier will promptly provide apetito with a copy of such plan as updated from time to time.

10.4 If reasonably required by apetito, the Supplier shall liaise with apetito to ensure that the procedures set out in the business continuity and disaster recovery plan will interface with any business continuity and disaster recovery plans and procedures of apetito notified to the Supplier from time to time.

10.5 The Supplier shall not be entitled to rely upon the terms of clause 17 (Force Majeure) to relieve the Supplier of liability for any failure or delay by the Supplier to comply with the Supplier's obligations under the Agreement where and to the extent that such failure or delay can be (or, in circumstances where the Supplier has failed to comply with clauses 10.1 and 10.2, would have been) prevented or substantially mitigated by the Supplier's compliance with clauses 10.1 and 10.2 above.

11 Indemnity

11.1 The Supplier shall keep apetito indemnified in full against all liabilities, costs, expenses, damages, and losses (including, but not limited to, any direct or indirect, consequential losses, loss of profit, lost of reputation, penalties and legal costs calculated on a full indemnity basis), including any interest, fines, legal and other professional fees, and expenses awarded against or suffered, incurred or paid by apetito as a result of or in connection with:

11.1.1 any claim made against apetito by a third party for death, personal injury or damage to property arising out of, or in connection with Goods, Services and/or Deliverables, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents, or sub-contractors;

11.1.2 any claim made against apetito by a third party arising out of, or in connection with, the supply of the Goods, Services and/or Deliverables, to the extent that such claim arises out of the breach, negligent performance, or failure or delay in performance of the Agreement by the Supplier, its employees, agents, or sub-contractors; and

11.1.3 any claim made against apetito for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Service and/or Deliverables.

11.2 This clause 11 shall survive termination of the Agreement.

12 Data Protection

12.1 The following definitions apply in Clause 12:

12.1.1 **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing, and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

12.1.2 **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation (EU 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

12.1.3 **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.

12.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove, or replace a party's obligations or rights under the Data Protection Legislation.

12.3 The parties acknowledge that for the purposes of the Data Protection Legislation, apetito is the Controller and the Supplier is the Processor. The Purchase Order and/or Special Terms sets out the scope, nature, and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.

12.4 Without prejudice to the generality of clause 12.2, apetito will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier (and/or

lawful collection of the Personal Data by the Supplier on behalf of apetito) for the duration and purposes of the Agreement.

- 12.5 Without prejudice to the generality of clause 12.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Agreement:
- 12.5.1 process that Personal Data only on the documented written instructions of apetito which are set out in the Purchase Order and/or Special Terms unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify apetito of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying apetito;
- 12.5.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by apetito, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, damage or destruction and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 12.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 12.5.4 not transfer any Personal Data outside of the UK unless the prior written consent of apetito has been obtained and the following conditions are fulfilled:
- 12.5.4.1 apetito or the Supplier has provided appropriate safeguards in relation to the transfer;
- 12.5.4.2 the Data Subject has enforceable rights and effective legal remedies;
- 12.5.4.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- 12.5.4.4 the Supplier complies with reasonable instructions notified to it in advance by apetito with respect to the processing of the Personal Data.
- 12.5.5 assist apetito, at apetito's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 12.5.6 notify apetito without undue delay on becoming aware of a Personal Data breach;
- 12.5.7 at the written direction of apetito, delete or return Personal Data and copies thereof to apetito on termination of the agreement unless required by Domestic Law to store the Personal Data; and
- 12.5.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 12 and allow for

audits by apetito or apetito's designated auditor and immediately inform apetito if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

- 12.6 Subject to clause 12.7, apetito does not consent to the Supplier appointing any third-party processor of Personal Data under the Agreement.
- 12.7 apetito consents to the Supplier appointing any third-party processor which is identified in the Purchase Order and/or Special Terms as a third-party processor of Personal Data under the Agreement. The Supplier confirms that it has entered or (as the case may be), will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 12 and which reflect and will continue to reflect the requirements of the Data Protection Legislation. As between apetito and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 12.7.

13 Conflicts of Interest and Compliance with Laws

- 13.1 The Supplier shall take appropriate steps to ensure that neither it nor any employee, agent, supplier, or sub-contractor is placed in a position where there is or may be an actual or potential conflict between the pecuniary or personal interests of the Supplier or such persons and the duties owed to apetito under the provisions of the Agreement. The Supplier shall disclose to apetito the full particulars of any such conflict or potential conflict of interest by giving immediate notice in writing and apetito shall decide the most appropriate action.
- 13.2 The Supplier shall:
- 13.2.1 at all times comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and the Criminal Finances Act 2017 ("**Relevant Requirements**");
- 13.2.2 comply with apetito's ethics, anti-bribery and anti-corruption policies as may be supplied by apetito from time to time and any relevant industry code on anti-bribery from time to time ("**Relevant Policies**");
- 13.2.3 have and shall maintain in place throughout the term of the Agreement its own policies and procedures to ensure compliance with the Relevant Requirements and the Relevant Policies, and will enforce them where appropriate;
- 13.2.4 promptly report to apetito any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Agreement;
- 13.2.5 promptly notify apetito if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement);
- 13.2.6 within 6 months of the date of the Agreement, and annually thereafter, certify to apetito in writing signed by an officer of the Supplier, compliance with this clause 13.2 by the Supplier. The Supplier shall provide such supporting evidence of compliance as apetito may reasonably request; and
- 13.2.7 ensure that all of its suppliers, agents and subcontractors who perform services or provide goods in connection with

the Agreement do so only on the basis of a written contract which imposes on and secures from such person's terms equivalent to those imposed on the Supplier in this clause 13.2 ("Relevant Terms"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to apetito for any breach by such persons of any of the Relevant Terms.

- 13.3 The Supplier warrants that it has engaged in no price fixing, bid rigging, illegal price information exchange agreement or other arrangement in breach of UK, EU, or other competition laws relevant to the supply of Goods and/or Services under the Agreement.

14 Confidentiality

A party ("Receiving Party") shall keep in strict confidence all Confidential Information which has been disclosed to the Receiving Party by the other party ("Disclosing Party"), its employees, agents, or sub-contractors. The Receiving Party shall restrict disclosure of such Confidential Information to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Agreement, and shall ensure that such employees, agents, or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. Nothing in this clause shall prevent a disclosure of Confidential Information strictly as may be required by law, a court of competent jurisdiction or by a governmental or regulatory authority. This clause 14 shall survive termination of the Agreement.

Neither party shall use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Agreement.

15 Termination

- 15.1 This Agreement may be terminated:

15.1.1 by the Supplier giving apetito 3 months' written notice where apetito has committed a material breach of the Agreement and where apetito has failed to remedy the breach within 30 days of receipt of written notice from the Supplier requiring that it be remedied (save in respect of undisputed unpaid invoices which are dealt with under clause 15.1.3;

15.1.2 by apetito giving the Supplier:

15.1.2.1 immediate written notice where the Supplier has committed a material breach of the Agreement and has failed to remedy the breach within 30 days of receipt of written notice from apetito requiring that it be remedied; or

15.1.2.2 immediate notice where the Supplier has committed a material breach of the Agreement which is incapable of remedy; or

15.1.2.3 7-days' written notice in accordance with the provisions of clause 17.4 (Force Majeure) where a Force Majeure Event has occurred in relation to the Agreement for more than 6 weeks; or

15.1.2.4 30-days' written notice where the Supplier committed a persistent breach of any SLA or, if applicable, a single breach of any escalation level of the SLA and the matter has not been agreed and resolved to apetito's reasonable satisfaction under the escalation procedure set out in the SLA; or

15.1.2.5 30-days' written notice where apetito is of the reasonable opinion that serious prejudice to its goodwill and reputation has occurred and will continue by virtue of the subsistence of the Agreement; or

15.1.2.6 Immediate written notice in the event that a Change of Control occurs in relation to the Supplier without the prior written consent of apetito (such consent not to be unreasonably withheld or delayed). apetito shall be entitled at its sole discretion to withhold its consent to any proposed Change of Control in relation to the Supplier in the event that:

a) the Supplier is acquired or to be acquired by a competitor of apetito; or

b) the Supplier becomes or is contractually obliged to become a member of a group which is wholly or partially owned or controlled (directly or indirectly) by any competitor of apetito; or

c) such Change of Control would result in any person with a material shareholding in a competitor of apetito becoming a shareholder holding 25% or more of the shares in the Supplier (provided always that a holding of shares in a private limited company which confers not more than 25% of the votes which can generally be cast at a general meeting of such company or a holding of shares in a listed company which confers not more than 5% of the votes which can generally be cast at a general meeting of such company shall in each case not constitute a material shareholding for the purposes of this clause 15.1.2.6);

15.1.3 by the Supplier giving 1 months' written notice to apetito where an undisputed invoice remains wholly or partly unpaid for more than sixty days after the same has become due provided the Supplier has served notice in accordance with clause 8.6;

15.1.4 by the Supplier giving 60-days written notice in accordance with the provisions of clause 17.4 (Force Majeure) where a Force Majeure Event has occurred in relation to this Agreement for more than 6 weeks; or

15.1.5 with immediate effect by either party if the other party becomes insolvent, or if an order is made or a resolution is passed for the winding up of the other party (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the other party's assets or business, or if the other party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt in any jurisdiction or if it is unable to pay its debts within the meaning of the Insolvency Act 1986.

15.2 In any circumstances in these Terms and Conditions in which apetito may terminate the Agreement, where both Goods and Services are supplied, apetito may instead terminate part of the Agreement in respect of the Goods, or in respect of the Services, and the Agreement shall continue in respect of the remaining supply.

16 Consequences of Termination

- 16.1 Upon and for three months following termination of the Agreement or any part of it for any reason, the Supplier will provide, at no cost, such information and assistance reasonably necessary to enable apetito or any third party nominated by apetito to undertake the provision of Goods or Services in place of the Supplier.
- 16.2 The Supplier will carry out its obligations in clause 16.1 in such a manner so as not to disrupt or hinder apetito's business or interfere with apetito's use or enjoyment of the Goods or Services.
- 16.3 On termination of the Agreement or any part of it for any reason:
- 16.3.1 where the Services are terminated, the Supplier shall immediately deliver to apetito all Deliverables, whether or not then complete, and return all apetito Property at the Supplier's cost. If the Supplier fails to do so, then apetito may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement;
- 16.3.2 the accrued rights and remedies of the parties as at termination or expiry shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry; and
- 16.3.3 clauses which expressly or by implication have effect after expiry or termination shall continue in full force and effect.

17 Force Majeure

- 17.1 A party, provided that it has complied with the provisions of clause 17.3, shall not be in breach of the Agreement, nor liable for any failure or delay in performance of any obligations under the Agreement arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (a "**Force Majeure Event**") including any of the following: Acts of God, fire, flood, earthquake, windstorm or other natural disaster; war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions; terrorist attack, civil war, civil commotion or riots; epidemic, pandemic; nuclear, chemical or biological contamination or sonic boom; fire, explosion or accidental damage; loss at sea; extreme adverse weather conditions; collapse of building structures; interruption or failure of utility service, including but not limited to electric power, gas or water; and labour disputes including strikes, industrial action or lockouts BUT EXCLUDING ANY breakdown of any system, plant or machinery belonging to any party to the Agreement and/or to any sub-contractor and/or agent of any such party, any strike or industrial action of such party's staff and/or any shortage of materials or supplies unless such shortage can be reasonably shown to afflict the entire industry in which the relying party operates for the purposes of the Agreement.
- 17.2 In the event of clause 17.1 applying, the corresponding obligations of the other party shall be suspended to the same extent.
- 17.3 Either party that is subject to a Force Majeure Event shall not be in breach of the Agreement provided that:
- 17.3.1 it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;

- 17.3.2 it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
- 17.3.3 it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event to carry out its obligations under the Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible (and in the case of the Supplier, compliance with its disaster recovery and business continuity obligations in clause 10).

- 17.4 If the Force Majeure Event prevails for a continuous period of more than 6 weeks, either party may terminate the Agreement in accordance with the provisions of clause 15. On the expiry of the relevant notice periods, the Agreement will terminate. Such termination shall be without prejudice to the rights of the party in respect of any breach of the Agreement occurring prior to such termination.

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- 18.1 Unless agreed otherwise in writing, apetito and the Supplier do not anticipate that any employees or workers are likely to transfer to apetito as a result of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**Regulations**"). If any are found to or claim that they do transfer upon the commencement or termination of any part of the Services, the Supplier shall indemnify apetito in full for and against all claims, costs, expenses, or liabilities whatsoever and howsoever arising incurred or suffered by apetito including all legal expenses and other professional fees (together with any value added tax thereon) in relation to:
- 18.1.1 the termination by apetito of the employment of any of the employees or workers;
- 18.1.2 anything done or omitted to be done before or after the Commencement Date in respect of any of the employees or workers which is deemed to have been done by apetito by virtue of the Regulations; and
- 18.1.3 any claim made at any time by any employee or worker who claim to have become an employee of or have rights against apetito by virtue of the Regulations;

provided that such costs, claims, expenses, and liabilities are not payable to the extent that they are as a result of apetito's act or omission.

19 Assignment and Sub-Contracting

- 19.1 Subject to clauses 19.2 and 19.3 below, the Supplier shall not assign, mortgage, charge, sub-contract or otherwise transfer any rights or obligations under the Agreement without the prior written consent of apetito.
- 19.2 The Supplier may sub-contract any of its obligations under this Agreement provided the express prior written permission of apetito is obtained (such permission not to be unreasonably withheld or delayed) and in such circumstances the Supplier hereby undertakes and agrees:
- 19.2.1 to ensure the sub-contractors comply with the terms of the Agreement as if it were a party to the Agreement (as the Supplier);
- 19.2.2 as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities

under clause 19.2.1 to indemnify and keep indemnified apetito in full and on demand from and against all and any losses, costs and expenses suffered or incurred by apetito arising out of, or in connection with any failure by a sub-contractor to perform or discharge its obligations;

19.2.3 to remain primarily liable for the performance of any sub-contractor; and

19.2.4 to ensure that apetito is granted an enforceable third party right to directly enforce any of the terms of the sub-contract between the Supplier and its sub-contractors.

19.3 The terms of clause 19.2 shall not be affected by any direct dealings between apetito and the sub-contractor.

20 Dispute Resolution

20.1 If a dispute arises out of or in connection with this Agreement or the performance, validity, or enforceability of it ("**Dispute**") then, except as expressly provided in the Agreement, apetito and the Supplier shall follow the dispute resolution procedure set out in this clause:

20.1.1 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 Sales Manager of the Supplier and the Procurement Manager of apetito shall attempt in good faith to resolve the Dispute;

20.1.2 if the Sales Manager of the Supplier and the Procurement Manager of apetito are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to a Director of the Supplier and a Director of apetito, who shall attempt in good faith to resolve it; and

20.1.3 if the Director of the Supplier and the Director of apetito are for any reason unable to resolve the Dispute within 14 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 requesting a mediation. A copy of the ADR Notice should be sent to CEDR Solve. The mediation will start no later than 14 days after the date of the ADR Notice. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator.

20.2 No party may commence any court proceedings in relation to any Dispute until the procedure set out in clause 20.1 has been exhausted and either the mediation has terminated, or the other party failed to participate in the mediation, provided the right to issue proceedings is not prejudiced by a delay.

21 General

21.1 Notices:

21.1.1 Any notice or other communication required to be given to a party under or in connection with the Agreement 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.

21.1.2 Any notice or 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 9.00am 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.

21.1.3 This clause 21 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 emails and for the avoidance of doubt notice given under this Agreement shall not be validly served if sent by email.

21.2 Publicity:

Neither apetito nor the Supplier shall without the written consent of the other, advertise, publicly announce or provide to any other person information relating to the existence or details of the Agreement or use the other party's name for any promotion, publicity, marketing, or advertising purpose.

21.3 Waiver and cumulative remedies:

21.3.1 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 right or remedy. No failure or delay by a party in exercising any right or remedy under the Agreement 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.

21.3.2 Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

21.4 Severance:

21.4.1 If a court or 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.

21.4.2 If any invalid, unenforceable or illegal provision of the Agreement 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.

21.5 No partnership:

Nothing in the Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of 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.

21.6 Third parties:

A person who is not a party to the Agreement shall not have any rights under or in connection with it.

21.7 Variation:

Any variation, including any additional terms and conditions, to the Agreement shall only be binding when agreed in writing and signed by apetito and the Supplier.

21.8 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Agreement and Signature

AGREED by the Supplier through their authorised signature below:

On behalf of

Print Name

Position

Signature

Date