

Terms and Conditions for the Purchase of Goods and/or Services

1. INTERPRETATION

1.1 In these Conditions, the following definitions apply:

Applicable Laws: means all applicable laws, directives, regulations, rules, declaration, order, ordinance, or other binding requirement of or by any government authority applicable to a party, and codes of practice of any relevant jurisdiction, as amended and in force from time to time.

Business Day: a day (other than a Saturday, Sunday or a public holiday) when banks in the United States of America are open for business.

Commencement Date: has the meaning set out in clause 2.1.

Conditions: these terms and conditions, as amended from time to time in accordance with clause 16.10.

Confidential Information: has the meaning set out in clause 12.1.

Contract: the contract between ghd and the Supplier for the supply of Goods and/or Services in accordance with these Conditions (including the Data Protection Annex) and the Order.

Data Protection Annex means the annex to these Conditions.

Data Protection Legislation: all Applicable Laws relating to data protection and privacy in force from time to time including, in each case as applicable: (i) state privacy and data protection laws in the United States applicable to a party's processing of Personal Data, including (a) the California Consumer Privacy Act of 2018, Cal. Civ. Code § 1798.100 et seq.; (b) the Virginia Consumer Data Protection Act § 59.1-575 et seq.; (c) the Colorado Privacy Act § 6-1-1301; (d) the Connecticut Personal Data Privacy and Online Monitoring Act, public act no. 22-15; (e) the Utah Consumer Privacy Act, S.B. 227; and (f) any other applicable state privacy laws as may be enacted from time to time (together, "US State Privacy Laws"); (ii) the UK GDPR and the EU General Data Protection Regulation 2016/679 of the European Parliament of the Council (EU GDPR); and (iii) and any other applicable data protection or data privacy laws.

Deliverables: 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 without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Delivery Date: the date on which the Goods, or an instalment of the Goods (if relevant), is due to be delivered to ghd, as determined in accordance with clause 4.2(a).

Delivery Location: has the meaning set out in clause 4.2(b).

Developed Materials: has the meaning set out in clause 10.2.

Disclosing Party: has the meaning set out in clause 12.1.

Existing Materials: has the meaning set out in clause 10.2.

ghd: GHD North America LLC, principal place of business: Suite 100, 4500 Granada Suite, Calabasas, 91302 California, USA3317859.

ghd Materials: has the meaning set out in clause 6.1(c).

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by ghd and the Supplier.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyrights 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 right, 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 in any country and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection of similar effect in any part of the world.

Order: ghd's order for the supply of Goods and/or Services, as set out in ghd's purchase order form, or (if no purchase order form is issued by ghd) in ghd's written acceptance of the Supplier's quotation, proposal or similar, or overleaf, as the case may be.

Receiving Party: has the meaning set out in clause 12.1.

Services: the services, including the delivery of any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification, including the services identified on the face of the Order, the services described in a statement of work or similar document, services provided by the Supplier in connection with fulfilling its obligations under the Order, including the installation, configuration, training and other services related to the Goods.

Service Specification: the description, specification, scope of work and/or proposal for Services agreed in writing by ghd and the Supplier.

Supplier: the person or entity designated as Supplier in the Order and from whom ghd purchases the Goods and/or Services.

1.2 In these Conditions, the following rules apply:

- (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including**, **include(s)**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the

sense of the words preceding those terms and will be deemed followed by the phrase "but not limited to";

- (e) a reference to **writing** or **written** includes e-mails, unless specified otherwise; and
- (f) Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures or their equivalents are as defined in the US State Privacy Laws or the EU GDPR, as applicable.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by ghd to purchase Goods and/or Services from the Supplier in accordance with these Conditions and these Conditions apply to the purchase by ghd, and the provision by the Supplier, of the Goods and the Services. The Conditions shall be deemed to have been irrevocably accepted by the Supplier upon the earlier of the Supplier's:

- (a) execution of the Order;
- (b) issuing written acceptance of the Order;
- (c) shipment or delivery of any Goods or performance of any Services; or
- (d) acceptance of any payment made by ghd for any Goods or Services; or
- (e) any act by the Supplier consistent with fulfilling the Order,

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

2.2 These Conditions apply to the Contract 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. The Contract shall prevail over any terms or conditions contained in any other documentation, and expressly excludes any of the Supplier's terms and conditions of sale or any other document issued by the Supplier in connection with ghd's purchase of the Goods and the Services (including the Supplier's responses to ghd's requests for quotes, information, and proposals, and the Supplier's quotes, order acknowledgements, and invoices). All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

2.3 In the event of any conflict or inconsistency between these Conditions and the Order, the Conditions shall prevail unless the Order explicitly states that it is overruling a conflicting provision in these Conditions and identifies the specific conflicting provision.

3. SUPPLY OF GOODS

3.1 The Supplier shall ensure that, and represents and warrants that, the Goods shall:

- (a) conform with and be manufactured and supplied in accordance with their description, all applicable Goods Specifications, any samples provided by Supplier, and with the Order;
- (b) be of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier by ghd, expressly or by implication, and in this respect ghd relies on the Supplier's skill and judgement;
- (c) be free from defects in design, materials and workmanship and remain so for 36 months (or such other period specified in the Order) after delivery;
- (d) not contain any defective or inadequate warnings or instructions; and
- (e) comply with all Applicable Laws, including those relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 ghd shall have the right to inspect and test the Goods at any time before delivery. If following such inspection or testing ghd considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, ghd shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.3 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 Contract, and ghd shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. DELIVERY OF GOODS

4.1 The Supplier shall ensure that and represents and warrants that:

- (a) without prejudice to the requirements and Supplier's undertakings set out in clause 3.1, the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (c) if the Supplier requires ghd to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. ghd's return of such packaging material shall be solely at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

- (a) on the date or, if delivering by instalments, dates specified in the Order or, if no such date is specified, then within 14 days of the date of acceptance of the Order;
- (b) to the location set out in the Order or such other location reasonably requested by ghd before delivery (**Delivery Location**);

- (c) during ghd's normal hours of business on a Business Day, or as instructed by ghd.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location, or as otherwise specified in the Order (for example, via reference to an Incoterm 2010 or 2020).
- 4.4 If the Supplier:
- (a) delivers less than 95 percent of the quantity of Goods ordered, ghd may reject the Goods; or
 - (b) delivers more than 105 percent of the quantity of Goods ordered, ghd may at its sole discretion reject the entire quantity of the Goods delivered or the excess Goods only,
- and any rejected Goods shall be returned by ghd at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and ghd accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.
- 4.5 The Supplier shall not deliver the Goods in instalments without ghd'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 ghd to the remedies set out in clause 7.1 and, in the case of late deliveries, clause 7.2.
- 4.6 Risk in the Goods shall pass to ghd on completion of delivery.
- 4.7 Title in the Goods shall pass to ghd on the earlier of delivery of the Goods and ghd's payment for the Goods.

5. SUPPLY OF SERVICES

- 5.1 The Supplier shall from the Commencement Date and for the duration of the Contract provide the Services to ghd in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by ghd.
- 5.3 In providing the Services, the Supplier shall:
- (a) co-operate with ghd in all matters relating to the Services, and comply with all reasonable instructions of ghd;
 - (b) comply with all Applicable Laws;
 - (c) perform the Services in a professional and workman like manner and with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - (d) 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 Contract;
 - (e) ensure that the Services and Deliverables conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by ghd;
 - (f) provide all equipment, tools and such other items as are required to provide the Services;
 - (g) 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 ghd, will be free from defects in workmanship, installation and design; and
 - (h) meet or exceed all service levels set out in the Order (if any).
- 5.4 The Supplier acknowledges that ghd may rely or act on the Services.

6. SUPPLIER OBLIGATIONS

- 6.1 In performing its obligations and exercising its rights under the Contract, the Supplier shall, and Supplier represents and warrants that its staff, agents, and subcontractors (as appropriate) shall:
- (a) obtain, and at all times maintain, all necessary licences and consents, and comply with all Applicable Laws and with the latest Wella WeCare Code of Conduct (English language version) as set out at <https://www.wellacompany.com/supplier/terms-and-conditions-code-conduct> from time to time;
 - (b) when attending ghd's premises, observe all health and safety rules and regulations and any other security requirements that apply at any of ghd's premises;
 - (c) hold all materials, equipment and tools, drawings, specifications and data supplied by ghd to the Supplier (**ghd Materials**) in safe custody at its own risk, maintain ghd Materials in good condition until returned to ghd, and not dispose of, or use, ghd Materials other than in accordance with ghd's written instructions or authorisation; and
 - (d) not do, or omit to do, anything which may cause ghd to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business.

7. GHD REMEDIES

- 7.1 If the Supplier fails to deliver the Goods (or an instalment of the Goods, if relevant) by the relevant Delivery Date and/or perform the Services, or part of the Services, by the applicable dates referred to in clause 5.2, ghd shall, without limiting its other rights or remedies, have one or more of the following rights:
- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;

- (c) to recover from the Supplier any costs incurred by ghd in obtaining substitute goods and/or services from a third party;
 - (d) where ghd 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
 - (e) to claim damages for any additional costs, loss or expenses incurred by ghd which are in any way attributable to the Supplier's failure to meet such dates.
- 7.2 Without prejudice to its other rights and remedies in the Contract or Applicable Law, if the Goods, or an instalment of the Goods (if relevant), are not delivered by the relevant Delivery Date, ghd may, at its option, claim or deduct 5 percent of the total price of the entirety of the Goods (which shall include all instalments under the Order) for each week's delay in delivery by way of liquidated damages (and not as a penalty). The maximum amount of liquidated damages ghd is entitled to under the Contract is 25 percent of the total price of the Goods (which shall include all instalments under the Order). For the purposes of this clause 7.2, the price of the Goods shall be determined in accordance with clause 9.
- 7.3 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, ghd shall have one or more of the following rights, whether or not it has accepted the Goods:
- (a) 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;
 - (b) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (c) 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);
 - (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - (e) to recover from the Supplier any expenditure incurred by ghd in obtaining substitute goods from a third party; and
 - (f) to claim damages for any additional costs, loss or expenses incurred by ghd arising from the Supplier's failure to supply Goods in accordance with clause 3.1.
- 7.4 If the Supplier has supplied Services that do not comply with the requirements of clause 5.3 or clause 6.1 then, without limiting or affecting other rights or remedies available to it, ghd shall have one or more of the following rights and remedies:
- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (b) to return the Deliverables to the Supplier at the Supplier's own risk and expense;
 - (c) to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);
 - (d) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
 - (e) to recover from the Supplier any expenditure incurred by ghd in obtaining substitute services or deliverables from a third party; and
 - (f) to claim damages for any additional costs, loss or expenses incurred by ghd arising from the Supplier's failure to comply with clause 5.3 or clause 6.1.
- 7.5 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 7.6 ghd's rights under the Contract are in addition to any and all rights and remedies available to ghd under Applicable Law.

8. CUSTOMER'S OBLIGATIONS

- 8.1 ghd shall:
- (a) provide the Supplier with reasonable access at reasonable times to ghd's premises to the extent required in order to enable the Supplier to provide the Services; and
 - (b) provide such information as the Supplier may reasonably request, to the extent such information is required to enable the Supplier to provide the Services.

9. CHARGES AND PAYMENT

- 9.1 The price for the Goods:
- (a) shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and
 - (b) shall be inclusive of the costs of packaging, insurance, and carriage of the Goods, unless otherwise agreed in writing by ghd including via the Order. No extra charges shall be effective unless agreed in writing and signed by ghd.
- 9.2 The charges for the Services shall be set out in the 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 ghd, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 9.3 Unless otherwise agreed in an Order, in respect of Goods, the Supplier shall invoice ghd on or at any time after completion of delivery and, in respect of Services, the Supplier shall invoice ghd on completion of the Services. Each invoice shall include such supporting information required by ghd to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

- 9.4 In consideration of the supply of Goods and/or Services by the Supplier, ghd shall pay, to a bank account nominated in writing by the Supplier, the properly invoiced, undisputed amounts within the timeframe set out in the Order or, if no timeframe is specified, within 120 days of receipt of the correctly rendered invoice.
- 9.5 All amounts payable by ghd under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to ghd, ghd 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.
- 9.6 If ghd fails to pay any undisputed amount properly due and payable by it under the Contract within 60 days following the relevant due date for payment, the Supplier shall have the right to charge interest on the overdue amount at the rate of 1% per annum, provided that the Supplier first gives at least fourteen (14) days prior written notice of its intention to charge interest, and provided further that undisputed payment remains outstanding at the end of such notice period. This clause shall not apply to payments that ghd disputes in good faith.
- 9.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow ghd to inspect such records at all reasonable times on request.
- 9.8 ghd may, without limiting its other rights or remedies and without notice, set off any amount owing to it by the Supplier or a member of the Supplier's group against any amount payable by ghd to the Supplier, in each case whether under the Contract or otherwise.
- 9.9 All amounts due from the Supplier under or in connection with the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 In respect of the Goods and any goods that are transferred to ghd as part of the Services under this Contract, including without limitation the Deliverables, the Supplier represents and warrants that it has full, clear and unencumbered title to all such items, and that at the date of delivery of such items to ghd, it will have full and unrestricted rights to sell and transfer all such items to ghd.
- 10.2 Subject to the rights of the Supplier and/or any third party licensor in respect of any pre-existing materials which are used by the Supplier in order to provide the Services (**Existing Materials**), ghd shall be entitled to the ownership of all Intellectual Property Rights in the Deliverables and other materials arising out of the provision of the Services (**Developed Materials**), and the Supplier hereby irrevocably, unconditionally and absolutely assigns and agrees to irrevocably assign to ghd and its successors and assigns, with full title guarantee, and without restriction, all right, title and interest in and to all existing and future Intellectual Property Rights (including future copyright and design right) subsisting in or relating to all Developed Materials whether created, developed or produced before, on or after the Commencement Date, in all countries and with the right to sue for damages and other relief for past infringement of any of those Intellectual Property Rights. For the avoidance of doubt, the assignment under this clause 10.2 shall take effect from the date on which the relevant Developed Material was or is created, developed or produced. To the extent that ownership of any Developed Materials or rights therein cannot be assigned to ghd under any Applicable Law, the Supplier hereby grants to ghd a perpetual, irrevocable, fully paid up, royalty free, worldwide, exclusive, and unlimited license to use, exploit, and practice any and all such Developed Materials and rights. The Supplier will execute, acknowledge, and deliver all instruments and documents and do all such other acts and things, as may be requested by ghd from time to time to secure and preserve ghd's rights in the Developed Materials, or to enforce, defend or confirm ghd's right to exploit those rights.
- 10.3 The Supplier shall procure that, where relevant, all moral rights in respect of the Developed Materials are waived by the relevant third parties and at the request and reasonable expense of ghd, the Supplier shall do, and/or shall procure that its consultants, employees, agents, contractors and sub-contractors shall do, all such things and sign all such documents or instruments necessary in the opinion of ghd to enable ghd to obtain, defend and enforce its rights in the Developed Materials.
- 10.4 The Supplier grants to ghd a perpetual, irrevocable, non-exclusive, transferable, sublicensable (through multiple levels of sublicensees), world-wide, fully paid, royalty-free license to use any Existing Materials incorporated in any Developed Materials to such extent as is necessary to enable ghd to make use of the Developed Materials.
- 10.5 ghd grants to the Supplier, during the term of the Contract, a non-exclusive, revocable, royalty free license to use ghd Materials and the Developed Materials only to the extent necessary to perform its obligations under the Contract.
- 10.6 The Supplier acknowledges and agrees that all rights in the ghd Materials are and shall remain the exclusive property of ghd or its licensors (as appropriate).

11. INDEMNITY AND INSURANCE

- 11.1 The Supplier shall defend, indemnify, and hold harmless ghd, its subsidiaries, affiliates, successors, and assigns and its and their respective officers, directors, stockholders, employees, contractors, agents, representatives, and ghd's customers (collectively **Indemnitees**) from and against any and all actions, causes of actions, suits, demands, judgments, losses, liabilities, costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, fines, reasonable attorney's and other professional fees and expenses awarded against or incurred or paid by ghd as a result of or in connection with any claim or allegation by a third party related to:
- (a) death, personal injury or damage to property arising out of, or in connection with the Services or Goods;
 - (b) the supply of the Goods or Services;
 - (c) any act or omission of the Supplier or any person or entity acting for, on behalf or at the request of the Supplier;

- (d) any failure by Supplier to comply with any term or condition of the Contract, including the Goods Specification, Service Specification, or timely delivery of all Goods and Services; and
- (e) 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 Services (excluding ghd Materials).

- 11.2 For the duration of the Contract and for a period of 12 months thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on ghd'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.
- 11.3 This clause 11 shall survive termination of the Contract.

12. CONFIDENTIALITY

- 12.1 A party (**Receiving Party**) shall keep in strict confidence all non-public information relating to the other party's (**Disclosing Party**) business, including business plans, financial data, customer information, marketing plans, technology, products, services, trade secrets, technical or commercial know-how, formulas, specifications, inventions, processes, ideas, inventions (whether or not patentable) or initiatives, and any and all other proprietary or confidential information that may give an opportunity to acquire an advantage over the competitors who do not know or use such information, which the Receiving Party may learn, obtain, or receive in connection with the Contract (**Confidential Information**). The Receiving Party shall secure the non-disclosure and confidentiality of the Disclosing Party's Confidential Information using the same means that the Receiving Party uses to protect its own confidential information of similar nature, but in no event less than reasonable care.
- 12.2 The Receiving Party may disclose the Disclosing Party's Confidential Information: a) to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and for no other purpose; provided, however, that the Receiving Party shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party; and b) where ghd is the Receiving Party, to its professional advisors or consultants who are engaged to advise ghd or any member of its group. The Receiving Party shall be responsible for, and liable for all damages arising from, the actions and omissions of all its employees, agents or subcontractors it has disclosed the Disclosing Party's Confidential Information to as if they were the actions and omissions of the Receiving Party itself.
- 12.3 Save as explicitly set out in clause 12.2, the Receiving Party shall not use the Disclosing Party's Confidential Information for any purpose other than to perform its obligations under the Contract.
- 12.4 The Receiving Party shall not be obligated to treat as Confidential Information of the Disclosing Party, any information that Receiving Party can prove through competent written documentation:
- (a) was in existence as of the date of disclosure of such information by the Disclosing Party to the Receiving Party;
 - (b) is known or made available to the public or otherwise is in the public domain at the time of disclosure by the Disclosing Party to the Receiving Party;
 - (c) becomes part of the public domain after disclosure by the Disclosing Party to the Receiving Party by any means except through either:
 - (i) a breach of this Agreement by the Receiving Party; or
 - (ii) a third party under an obligation of confidentiality to the Disclosing Party or the Receiving Party; or
 - (d) was otherwise known by the Receiving Party prior to communication by the Disclosing Party to the Receiving Party of such information.
- 12.5 For the avoidance of doubt, specific Confidential Information disclosed to the Receiving Party by the Disclosing Party shall not be deemed to be publicly known, or in the Receiving Party's prior possession, merely because such Confidential Information is embraced by or relates to more general information which is publicly known or in the Receiving Party's prior possession. Likewise, specific Confidential Information disclosed to the Receiving Party by the Disclosing Party shall not be deemed to be publicly known merely because other Confidential Information contained in the same document or embodiment becomes publicly known.
- 12.6 Nothing in this clause 12 shall prevent the Receiving Party from disclosing the Disclosing Party's Confidential Information for the purpose of complying with the Receiving Party's obligations to supply information pursuant to a valid court order or Applicable Law; provided, however, that:
- (a) the Receiving Party shall first have given prompt notice to the Disclosing Party of any such order or Applicable Law;
 - (b) the Disclosing Party shall have been afforded a reasonable opportunity to prevent or limit any such disclosure; and
 - (c) any of the Disclosing Party's Confidential Information so disclosed shall remain subject to the confidentiality and non-use restrictions of this Agreement for all other purposes.
- 12.7 Any threatened breach of this clause 12 may cause irreparable harm to the Disclosing Party as to which monetary damages would be inadequate to compensate the Disclosing Party. Accordingly, the Disclosing Party shall have the right, in addition to its other rights and remedies under the Contract, to obtain:
- (a) immediate injunction for any breach or threatened breach by the Receiving Party of this clause 12 without the necessity of posting a bond or other security and without proving actual damages; and
 - (b) reimbursement of its costs and expenses (including reasonable attorneys' fees) from the Receiving Party.

12.8 This clause 12 shall survive termination of the Contract.

13. TERMINATION

13.1 Without limiting its other rights or remedies, ghd may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing of the breach;
- (b) the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business;
- (d) the Supplier's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy; or
- (e) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

13.2 Without limiting its other rights or remedies, ghd may terminate the Contract:

- (a) in respect of the supply of Services, by giving the Supplier 30 days' written notice, or such other notice period specified in the Order; and
- (b) in respect of the supply of Goods, with immediate effect by giving written notice to the Supplier.

13.3 If ghd terminates the Contract in accordance with clause 13.2, it shall reimburse the Supplier its costs reasonably and demonstrably incurred in relation to any work in progress at the date of termination. Such reimbursement shall not include loss of anticipated profits or any consequential loss. ghd's obligation to reimburse under this clause 13.3 shall be subject to:

- (a) the Supplier's compliance with clause 14.1;
- (b) the Supplier mitigating its cost associated with the relevant work in progress, which shall include using reasonable endeavours to find a third-party buyer for the work in progress and/or the finished product that the work in progress will become; and
- (c) the Supplier being able to evidence, to ghd's reasonable satisfaction, that the cost has been reasonably incurred.

13.4 Where both Goods and Services are supplied, ghd may terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

14. CONSEQUENCES OF TERMINATION

14.1 On termination of the Contract or any part of it for any reason:

- (a) where the Services are terminated, the Supplier shall immediately deliver to ghd all Deliverables, whether or not then complete, and return all ghd Materials. If the Supplier fails to do so, then ghd 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 the Contract;
- (b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- (c) clauses which expressly or by implication have effect or continue in effect after termination shall continue in full force and effect.

15. DATA PROTECTION

The Supplier will comply with all applicable requirements of the Data Protection Legislation and the applicable provisions of the Data Protection Annex.

16. GENERAL

16.1 **Force majeure:** Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from supplying the Goods and/or Services for more than 4 weeks, ghd

shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.

16.2 **Assignment and sub-contracting:** The Supplier shall not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of ghd.

16.3 **Entire Agreement:** The Contract constitutes the sole and entire agreement between the parties relating to its subject matter and supersedes all other prior and contemporaneous understandings, agreements, negotiations, and communications, both written and oral, with respect to such subject matter. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

16.4 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business.
- (b) 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 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- (c) For the purposes of this clause, "writing" shall not include e-mails or fax and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail or fax.

16.5 Waiver and cumulative remedies:

- (a) A waiver of any right or remedy under the Contract or Applicable Law 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 Contract or Applicable 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 under the Contract or Applicable Law shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided under Applicable Law.

16.6 Severance:

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

16.7 **Announcements:** No party shall make, or permit to make, any public announcement concerning the existence, subject matter or terms of the Contract, or the relationship between the parties, without the prior written consent of the other party.

16.8 **No partnership:** Nothing in the Contract 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. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

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

16.10 **Variation:** Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the parties or their authorised representatives.

16.11 **Governing law and jurisdiction:** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the substantive laws of the State of California. Each party irrevocably agrees that the courts of the state of California shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to the Contract.

DATA PROTECTION ANNEX

1. To the extent that the Supplier processes any Personal Data on behalf of ghd under or in connection with these Conditions and US State Privacy Laws apply to such processing, the Supplier shall:
 - 1.1 be prohibited from retaining, using, or disclosing that Personal Data for any purpose other than for the specific purpose of performing the Services or any other relevant terms, or as otherwise permitted by US State Privacy Laws, including retaining, using, or disclosing Personal Data for a purpose other than providing the Services or outside of the direct business relationship between the parties, or for the Supplier's own commercial purpose;
 - 1.2 be prohibited from Selling or Sharing (as those terms are defined under US State Privacy Laws, in particular, the California Consumer Privacy Act) Personal Data to or with any third party for monetary or other valuable consideration;
 - 1.3 be authorized by ghd to subcontract to any subprocessor the Supplier's processing operations performed on behalf of ghd, provided that the Supplier notifies ghd in advance of its intention to subcontract to any subprocessor, allowing ghd to object to the use of that subprocessor on reasonable grounds, such objection to be notified within thirty (30) days. The Supplier and ghd shall work together in good faith to find a mutually satisfactory solution to ghd's objections, which may include the use of an alternative subprocessor;
 - 1.4 in the event of the expiration or termination of the Contract, the Supplier shall at ghd's option: (i) promptly return all Personal Data and all copies of the Personal Data to ghd, and delete all copies kept on any electronic media; or (ii) destroy all copies of the same and certify to ghd that it has done so; in each case except to the extent that the Supplier is prevented by its national law or local regulator from destroying or returning all or part of such Personal Data, in which event the Personal Data will be kept confidential and will not be processed for any purpose, except to the extent absolutely required to comply with any relevant laws requiring the retention of that Personal Data, and provided that any such processing is in any event in compliance with US State Privacy Laws, as applicable;
 - 1.5 permit ghd, on reasonable prior notice, to inspect and audit the facilities used by the Supplier to process the Personal Data, and any and all records maintained by the Supplier relating to that processing. Alternatively, if ghd does not exercise its right to perform an audit or inspection, ghd may require the Supplier to arrange for a qualified and independent auditor to conduct an annual audit of Supplier's policies and technical and organizational measures in support of the obligations under these Conditions using an appropriate and accepted control standard or framework and audit procedure for the audits as applicable. Supplier shall provide a report of the audit to ghd upon request;
 - 1.6 only disclose Personal Data to a subcontractor pursuant to a written subcontract that is binding on both Supplier and subcontractor. The contract must contain restrictions at least as protective as those contained in this paragraph 1, wherein the subcontractor shall meet the obligations of Supplier with respect to Personal Data;
 - 1.7 notify ghd no later than five business days after it makes a determination that it can no longer meet its obligations with respect to the US State Privacy Laws. ghd may take reasonable and appropriate steps to ensure that Supplier uses Personal Data transferred to Supplier in a manner consistent with ghd's obligations under US State Privacy Laws, and ghd shall have the right, upon notice, to take reasonable and appropriate steps to stop and remediate unauthorized use of Personal Data;
 - 1.8 be prohibited from combining Personal Data with information that it receives from, or on behalf of, another source, or collects from its own interaction with an individual, provided that Supplier may combine Personal Data as authorized by US State Privacy Laws;
 - 1.9 with ghd, maintain reasonable and appropriate technical and organizational measures, including those set forth in the Order or as otherwise agreed by the parties in writing to protect the security of Personal Data and establish a clear allocation of the responsibilities with ghd to implement the measures;
 - 1.10 notify ghd, in writing or electronically within five calendar days, if Supplier receives a request to exercise privacy rights pursuant to the US State Privacy Laws (a Privacy Rights Request). Supplier shall not otherwise communicate with an individual regarding his or her Privacy Rights Request unless ghd directs Supplier to do so. Supplier shall, in a manner consistent with the nature and functionality of the Services or any other relevant terms, and the Supplier's role as a Supplier, service provider, contractor, or equivalent role, provide reasonable support to ghd to enable ghd to respond to the Privacy Rights Request. As applicable and instructed, Supplier shall assist ghd in providing a copy of, correcting or deleting relevant Personal Data;
 - 1.11 to the extent ghd discloses deidentified Personal Data to Supplier, take reasonable measures to ensure the information cannot be associated with a Data Subject or household and shall not attempt to reidentify the deidentified information;
 - 1.12 provide reasonable assistance to ghd in ensuring compliance with ghd's obligation to carry out data protection assessments, considering the nature of the processing and the information available to Supplier;
 - 1.13 disclose Personal Data only to employees and personnel who are under obligations of confidentiality regarding such Personal Data;
 - 1.14 promptly, and in any case within 48 hours, notify ghd of any breach of Personal Data, such notice to include all information reasonably required by ghd to comply with its obligations under applicable law; and
 - 1.15 comply with US State Privacy Laws as applicable and provide the level of privacy protection required under US State Privacy Laws.
2. To the extent that the Supplier processes any Personal Data on behalf of ghd under or in connection with the Contract and either or both of the UK GDPR and the EU GDPR applies to such processing, the Supplier shall:
 - 2.1 process that Personal Data only on the documented written instructions of ghd, unless the Supplier is required by Applicable Law to otherwise process that Personal Data. Where the Supplier is relying on Applicable Law as the basis for processing Personal Data, the Supplier shall promptly notify ghd this before performing the processing required by the Applicable Law unless the Applicable Law prohibits the Supplier from so notifying ghd;
 - 2.2 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - 2.3 not transfer any Personal Data outside of the US unless the prior written consent of ghd has been obtained;
 - 2.4 assist ghd, at ghd'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;
 - 2.5 notify ghd immediately on becoming aware of a Personal Data Breach;
 - 2.6 at the written direction of ghd, delete or return Personal Data and copies thereof to ghd on termination of the Contract unless required by Applicable Laws to store the Personal Data;
 - 2.7 maintain complete and accurate records and information to demonstrate its compliance with this paragraph 2 and allow for audits by ghd or ghd's designated auditor and immediately inform ghd if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation;
 - 2.8 not appoint a third-party processor of Personal Data in connection with the Contract without the prior specific written approval of ghd. Without prejudice to the foregoing, the Supplier confirms that it has entered (or will enter, as the case may be) with any third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this paragraph 2.8. As between ghd 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 paragraph 2.8; and
 - 2.9 shall ensure that at all times it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of any ghd data (which shall include Personal Data processed on behalf of ghd by the Supplier) in its or its sub-contractors possession and against accidental loss or destruction of, or damage to, ghd data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures.
3. **Other US Obligations:** Where paragraph 1 applies: (a) in the event Supplier is determined to act as a contractor under US State Privacy Laws, Supplier certifies that it understands the restrictions in paragraph 1 and will comply with them; and (b) to the extent required under US State Privacy Laws, ghd will inform Supplier of any Privacy Rights Request with which Supplier must comply and provide Supplier the information necessary to comply with the request.
4. **Precedence:** If both paragraphs 1 and 2 apply in respect of the same Personal Data processing then, to the extent of any conflict between those paragraphs, the provisions of paragraph 1 shall prevail.
5. **Description of Processing:** The Order sets out a description of the processing of Personal Data, including the nature and purpose of processing, and the type of Personal Data subject to processing and the categories of data subject. The duration of the processing shall be for the duration of the Contract.