**SUPPLY OF SERVICES AGREEMENT**

**Complete all areas highlighted yellow in the main body and in the Schedules.**

**THIS AGREEMENT IS MADE ON 202[•]**

**PARTIES**

1. **MACMILLAN CANCER SUPPORT** a charity registered in England & Wales (charity number 261017), Scotland (charity number SC039907) and the Isle of Man (charity number 604), and a company limited by guarantee incorporated and registered in England & Wales (company number 2400969) and the Isle of Man (company number 4694F), and whose registered office is at 89 Albert Embankment, London SE1 7UQ (“**Macmillan**”); and
2. **[FULL COMPANY NAME]** incorporated and registered in [England and Wales] with company number [NUMBER], whose registered office is at [REGISTERED OFFICE ADDRESS] (the “**Supplier**”),

eacha“**Party**”and togetherthe“**Parties**”.

BACKGROUND

## Macmillan provides practical, emotional and financial support for people living with cancer.

## The Supplier is [INSERT DESCRIPTION OF SUPPLIER’S BUSINESS].

## The Supplier wants to enter into this Agreement with Macmillan in order to provide services regarding [INSERT DETAILS OF THE OVERALL PROJECT IN RELATION TO WHICH THE SERVICES ARE BEING PROVIDED].

INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement:

## Definitions.

|  |  |
| --- | --- |
| **Agreed Change** | has the meaning given to it in Clause 8.2. |

|  |  |
| --- | --- |
| **Applicable Law** | the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes from time to time in force which apply to the provision of the Services. |
| **Business Days** | a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business. |
| **Change of Control** | as defined in Clause 15.4.2. |
| **Commencement Date** | the relevant date that this Agreement is deemed to commence as set out in Clause 3 below. |
| **Confidential Information** | information in whatever form (including in written, oral, visual or electronic form and wherever located) relating to the business, products, affairs and finances of a Party and trade secrets including technical data and know-how relating to the business of a Party or any of its suppliers, beneficiaries, agents, management or business contacts, and, in respect of Macmillan, including information that the Supplier creates, develops, receives or obtains in connection with this Agreement; in each case, whether or not such information is marked confidential. |
| **Deliverables** | any and all documentation and materials in all form and media developed in the course of the Services, including all records, reports, data, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software programs, inventions, including hard copy and electronic form, prepared by the Supplier in connection with the provision of the Services and including the deliverables specified in Schedule 1. Reference to Deliverables (and to Schedule 1) will be deemed to include any variations of the same pursuant to a Change Request mutually agreed in accordance with [Clause 8](#ChangeRequest). |
| **Disclosing Party** | the Party which discloses Confidential Information to, or in respect of which Confidential Information comes to the knowledge of, the other Party. |
| **Good Industry Practice** | standards, practices, methods and procedures conforming to the law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances. |
| **Intellectual Property Rights** | all intellectual, proprietary and industrial property rights of whatsoever nature and all rights of a similar nature, including rights in know-how, goodwill or to sue for passing off, unfair competition rights, trade marks, service marks, product names and logos, trade names, trade dress or get-up, business names, registered designs, models, unregistered design rights, rights in designs, unregistered trademarks, copyright (including all ideas, concepts, themes, characters, stories and places contained in or forming part of any copyrightable work), rights in the nature of copyright and neighbouring and related rights, database rights, semi-conductor topography rights, rights in or to domain names, any rights in any inventions, patents (and ideas that are patentable subject matter), rights in or to utility models, business plans or models, confidential information including trade secrets rights to use and protect the confidential information, applications for and rights to apply for and to be granted any of the foregoing, including all and any applications, extensions and renewals thereof throughout the world and in each case in the United Kingdom and all other countries in the world whether registered or not. |
| **Key Personnel** | any member of the Supplier's Team who is identified in Schedule 1 as being key to the Services. |
| **Macmillan IPRs** | all Intellectual Property Rights owned by or licenced to Macmillan, including Intellectual Property Rights in any Macmillan Property. |
| **Macmillan Property** | any property of Macmillan of any kind including all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the activities, affairs or business of Macmillan or its partners, customers and business contacts, and any equipment, keys, hardware or software provided for the Supplier to use by Macmillan, and any data or documents (including copies) produced, maintained or stored by the Supplier for Macmillan on the computer systems or other electronic equipment of Macmillan or of the Supplier pursuant to this Agreement. |
| **Personal Data** | any information relating to an identified or identifiable natural person that is processed by the Supplier as a result of, or in connection with, the provision of the services under this Agreement. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. |
| **Privacy and Data Protection Requirements** | means all applicable data protection and privacy legislation in force from time to time in the UK, including the retained EU law version of General Data Protection Regulation ((EU) 2016/679) as incorporated into UK law (“**UK GDPR**”), the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699) and the guidance and codes of practice issued by the Information Commissioner or any other supervisory authority applicable to a Party. The words or phrases “**Commissioner**”, “**data subject**”, “**controller**”, “**data processor**”, “**special category data**”, shall have the same meaning as defined in the UK GDPR. |
| **Processing, processes and process** | either any activity that involves the use of Personal Data or as the Privacy and Data Protection Requirements may otherwise define processing, processes or process. It includes any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. Processing also includes transferring Personal Data to third parties. |
| **Services** | the services to be provided by the Supplier under this Agreement including those set out in Schedule 1 and of which the Deliverables form part. Reference to Services (and to the Statement of Work or Schedule 1) will be deemed to include any variations of the same pursuant to an Agreed Change. |
| **Supplier's Team** | the Supplier's employees, consultants, agents, subcontractors and other personnel, which it engages in relation to the Services. |
| **Supplier Works** | all records, reports, data, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software programs, inventions, ideas, discoveries, developments, improvements or innovations and all materials (including drafts) embodying them in whatever form including hard copy and electronic form, which (i) belong to or are used by the Supplier to perform the Services and (ii) existed prior to the commencement of the Services (excluding for the avoidance of any doubt any Macmillan IPRs and Macmillan Property). |
| **Term** | the duration of this Agreement as defined in Clause 3.3. |
| **Working Day** | seven and a half (7½) hours (excluding travel time). |
| **VAT** | value added tax chargeable under the Value Added Tax Act 1994. |

## Any reference to European Union law is a reference to such law as it applies in England and Wales as retained, amended, extended, re-enacted or otherwise given effect from time to time on or after 23:00 on 31 January 2020.

## In the event of any conflict or ambiguity between any of the Privacy and Data Protection Requirements, or between the Privacy and Data Protection Requirements and Applicable Law, the order of precedence will be (in descending order of precedence):

#### UK domestic Privacy and Data Protection Requirements; and

#### Applicable Law of England and Wales; and

#### Privacy and Data Requirements not of the UK.

## References to any law, statute, statutory instrument, regulations, directions or guidance are references to those as from time to time amended, replaced, extended or consolidated and includes any subordinate legislation for the time being in force made under it.

## Clause and Schedule headings will not affect the interpretation of this Agreement.

## The Schedules form part of this Agreement and will have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

## Words in the singular will include the plural and vice versa, words denoting the masculine gender include the feminine gender, words denoting persons include bodies corporate and unincorporated associations and partnerships.

## This Agreement will be binding on, and to take effect to the benefit of, the Parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any Party will include that Party's personal representatives, successors and permitted assigns.

## An obligation in the Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

## References to Clauses, Schedules and Annexes are to the Clauses, Schedules and Annexes of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

## Any words following the terms ‘including’, ‘include’, ‘in particular’, ‘for example’ or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms.

## A reference to ‘writing’ or ‘written’ includes email.

COMMENCEMENT AND DURATION

## This Agreement is deemed to commence on the date specified in Schedule 1.

## In the event that this Agreement has not been signed by both Parties, this Agreement is deemed to commence on the date that it has been offered to the Supplier and signed by Macmillan and the Supplier commences provision of the Services (which is deemed to be an acceptance of the terms of this Agreement).

## This Agreement will continue:

### until the Services are completed and the Supplier’s obligations are fulfilled to the satisfaction of Macmillan (if prior to the end date specified in Schedule 1 (if any)), whereupon this Agreement will automatically expire; or

### until the end date for automatic expiry of this Agreement, where such end date is specified in Schedule 1; or

### unless and until this Agreement is terminated early in accordance with its terms (see Clause 15 (Termination) and Clause 18 (Force Majeure)),

## (as applicable, the “**Term**”).

SUPPLIER'S RESPONSIBILITIES

## The Supplier will provide the Services from the Commencement Date for the duration of the Term and deliver the Deliverables to Macmillan, all in accordance with this Agreement and Schedule 1, and will allocate sufficient resources to the Services to enable it to comply with this obligation.

## The Supplier will meet any performance dates specified in Schedule 1.

## The Supplier will:

### co-operate with Macmillan in all matters relating to the Services and promptly give to Macmillan all such information and reports as it may reasonably require in connection with matters relating to the provision of the Services. The Supplier will upon request by Macmillan provide such information to Macmillan via Macmillan’s digital, contract management system on a designated portal (details will be provided to the Supplier by Macmillan to enable the Supplier to access and load onto the portal such information including the Supplier’s insurance certificates, any quality certificates and annual accounts or other relevant information);

### procure the availability of the Key Personnel to provide the Services on such days, and at such times, as Macmillan may require during the Term;

### promptly inform Macmillan of the absence (or anticipated absence) of any Key Personnel and, if Macmillan requires, provide a suitably qualified replacement;

### not make any changes to the Key Personnel without the prior written approval of Macmillan (such approval not to be unreasonably withheld or delayed) and in the event of a change to any of the Key Personnel will, once the replacement is in post, provide the Services free of charge for one (1) Working Day;

### ensure that it and the Supplier's Team are sufficiently experienced, qualified and trained to provide the Services;

### not subcontract all or any part of the Services to any other person without the prior written consent of Macmillan;

### in relation to any intended subcontracting:

#### not appoint any subcontractor without the prior written consent of Macmillan;

#### not change, replace or terminate the appointment of a subcontractor without the prior written consent of Macmillan;

#### ensure that each subcontractor procures and maintains the minimum insurance coverages set out in Clause 11.4; and

#### ensure that contracts between the Supplier and each subcontractor will be in accordance with the terms of this Agreement and will include the terms and conditions set out in this Agreement insofar as applicable;

### notify Macmillan in writing immediately upon the occurrence of a change of a Change of Control of the Supplier;

### hold all Macmillan Property in safe custody at its own risk and maintain it in good condition until returned to Macmillan, and not dispose of or use the Macmillan Property other than in accordance with Macmillan’s written instructions or authorisations; and

### observe, and ensure that the Supplier's Team observe (i) all health and safety rules and regulations, (ii) any reasonable security requirements that apply at any of Macmillan's premises and (iii) the Macmillan policies which apply to the Services; provided that the same have been communicated to it under Clause 5.1.2.

## The Supplier will ensure that all persons involved in the provision of the Services comply with the terms of this Agreement. Macmillan may, acting reasonably, require the Supplier to remove a member of the Supplier’s Team who in Macmillan’s reasonable opinion does not have the sufficient skill or ability to perform the Services. The Supplier will promptly arrange for the removal of such individual and replace them as soon as is reasonably possible with personnel acceptable to Macmillan and who is competent and suitable to perform the Services.

## Notwithstanding the deployment of the Supplier’s Team, the Supplier will remain wholly liable to Macmillan for all of its obligations under this Agreement and all of its acts and omissions, and all acts and omissions of each member of the Supplier’s Team, as principal obligor in the performance of the Services.

## The Supplier will ensure that every member of the Supplier’s Team working to deliver the Services is familiar with Macmillan’s brand identity and guidelines as described on Macmillan’s website [as](about:blank) updated from time to time.

## Where the Services (and/ or any Deliverables) involve provision of any advice from the Supplier on the implementation of any recommended solution for Macmillan in the operation of its activities (be it operational, technical or otherwise), then all such solutions will conform to the respective specifications and budgetary requirements as set by Macmillan. By way of example only, if a solution proposed by the Supplier gives rise to any operational costs or capital outlay that is proposed to be borne by Macmillan, then any such solution must fall within the budgetary limits set by Macmillan for that solution. Notwithstanding any other terms or acceptance testing procedures that may be agreed, all such aforementioned solutions are subject to the prior written agreement of Macmillan before such solutions comprising Services/Deliverables are deemed accepted.

## The Supplier represents and warrants that it (and anyone signing the Agreement on behalf of the Supplier) has the requisite power and authority to enter into this Agreement.

## Nothing contained in this Agreement will be construed so as to create any contractual relationship between Macmillan and any subcontractor of the Supplier nor will it create any obligation on the part of Macmillan to pay or guarantee payment of any sums of money to any such subcontractor.

Macmillan’s OBLIGATIONS

## Macmillan will:

### provide such access to Macmillan's premises and data (subject always to Clause 13 (Data Protection and Security)), and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with Macmillan in writing in advance, for the purposes of the Services; and

### inform the Supplier of all security requirements and any other Macmillan policies that apply in relation to the Services.

## The Supplier acknowledges and agrees that a failure by Macmillan to comply with any of its material obligations under Clause 5.1 will only relieve the Supplier from complying with its obligations under this Agreement with effect from the date on which Macmillan receives written notice from the Supplier detailing (i) Macmillan’s non-compliance together with supporting evidence and (ii) the effect of the non-compliance on the delivery of the Services and the Deliverables by the Supplier in accordance with the terms of this Agreement (the “**Notice**”); Provided that, if such non-compliance is remediable, Macmillan will first have the opportunity to remedy the non-compliance within a period of ten (10) Business Days from the date of receipt of the Notice.

QUALITY OF SERVICES and review

## The Supplier warrants to Macmillan that the Supplier:

### will perform the Services with a high standard of skill, care and diligence in accordance with Good Industry Practice and that the Services and Deliverables will conform with all descriptions and specifications set out herein or otherwise agreed in writing between Macmillan and the Supplier;

### ensure that the Deliverables and all goods, materials, standards and techniques used in providing the Services are accurate as at the date of delivery to Macmillan and fit for purpose and are free from defects in workmanship, installation and design; and

### provide the Services and Deliverables in accordance with all Applicable Law and will inform Macmillan as soon as it becomes aware of any changes in such Applicable Law.

## Macmillan's rights under this Agreement are in addition to the statutory terms implied in favour of Macmillan by the Supply of Goods and Services Act 1982 and any other law.

## At Macmillan’s request, the Supplier will allow Macmillan, its auditors and any applicable regulatory body, to access any of the Supplier's premises, personnel and relevant records as may be reasonably required to fulfil any request by the regulatory body, to verify the accuracy of the charges or to verify that the Services are being provided in accordance with this Agreement. Macmillan will use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Supplier. The Parties will bear their own costs and expenses incurred in respect of the audit unless the audit identifies a default of this Agreement by the Supplier, in which case the Supplier will reimburse Macmillan for all of its reasonable costs incurred in connection with the audit.

## The provisions of this Clause 6 will survive any performance, acceptance or payment pursuant to this Agreement and will extend to any substituted or remedial services provided by the Supplier.

## The Supplier will provide regular feedback to Macmillan on progress in supplying the Services and Deliverables as set out in Schedule 1.

deliverables

## Macmillan will within ten (10) Business Days of receiving a Deliverable required to be provided as part of the Services indicate in writing its approval or otherwise of the Deliverable. If the Deliverable is not approved, the Supplier will promptly (and in any event within ten (10) Business Days) modify or replace it at no extra cost to Macmillan to reflect written feedback provided by Macmillan.

## If Macmillan (acting reasonably) does not accept the modified or replaced Deliverables, Macmillan will be entitled to reduce its payment to the Supplier by an amount equal to the cost of replacing any such Deliverables without prejudice to its other rights or remedies which it may have under this Agreement including its right to reject the unapproved Deliverables or all remaining Deliverables in their entirety.

CHANGE REQUEST

## Macmillan may in writing request changes to the Services (a “**Change Request**”). If Macmillan makes a Change Request, the Supplier will, within a reasonable time (and in any event not more than five (5) Business Days after receipt of Macmillan's Change Request), provide a written estimate to Macmillan of:

### the likely time required to implement the change;

### any necessary variations to the Supplier's charges arising from the change which will be no higher than the Supplier’s standard prices then in force); and

### any other impact of the change on this Agreement.

## If both Parties consent to a proposed change, the change will be made only after agreement in writing to the Change Request setting out details of any necessary variations to the Supplier's charges, the Services, the Deliverables and any other relevant terms of this Agreement to take account of the change that has been agreed, and that this Agreement has been varied in accordance with Clause 25.6 (the “**Agreed Change**”). From and including the date of an Agreed Change, any reference to Services, Deliverables and/ or charges (as applicable) in this Agreement will be deemed to include any changed Services, Deliverables and/ or charges.

## Unless both Parties consent in writing to a proposed change, there will be no change to the Services, the Deliverables or any of the Suppliers’ charges.

CHARGES AND PAYMENT

## In consideration of the provision of the Services by the Supplier and compliance with its obligations under this Agreement, Macmillan will pay the charges as set out in Schedule 2. If any charges are payable by instalments, Macmillan will pay each instalment upon successful completion and acceptance by Macmillan of the relevant milestone for each instalment as set out in Schedule 1 or as otherwise specified in Schedule 2.

## The Supplier will issue an invoice in accordance with Schedule 2 which must include and show VAT (if any). The Supplier will indemnify Macmillan against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on Macmillan at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this Agreement.

## If any amount paid by Macmillan to the Supplier in respect of VAT is subsequently found to have been overpaid or not properly chargeable, the Supplier will repay such amount to Macmillan and the Supplier will at the same time present to Macmillan a valid VAT credit note where by law it is required to do so. Macmillan will be entitled to deduct/set-off from any sums due to the Supplier any sums that the Supplier may owe to Macmillan at any time.

## Macmillan will pay each undisputed invoice which is properly due and submitted to it by the Supplier, within 30 days of receipt, to the following bank account:

Account Name: [•]

Account Bank: [•]

Account Number: [•]

Bank Address: [•]

Bank Sort Code: [•]

## If Macmillan fails to pay any amount payable by it under this Agreement, the Supplier may charge Macmillan interest on the overdue amount at the rate of two (2) % per annum above the base rate for the time being of the Bank of England from the due date until the date of actual payment of the overdue amount, whether before or after judgment. This Clause will not apply to amounts that Macmillan disputes in good faith.

## Without prejudice to any of its other rights or remedies available to it, Macmillan may suspend payment of the charges (in whole or in part) at any time if (i) in its reasonable opinion, the Services are not being carried out in accordance with the terms of this Agreement, and/ or (ii) Macmillan has reasonable cause to suspect that fraud, bribery or other financial irregularity may have occurred in connection with this Agreement. Macmillan will not withhold payment of the charges without first entering into good faith discussions with the Supplier.

## Unless otherwise agreed with Macmillan in writing, the Supplier will bear its own expenses. Invoices covering payment for any reimbursement of expenses will be payable by Macmillan only to the extent such expenses are provided for in Schedule 2 or otherwise agreed in writing in advance and, in all cases in any event, accompanied by relevant receipts or other appropriate evidence of payment and compliance with the policy of Macmillan for expenses as applicable from time to time.

## Where charges are made on a time and material basis, the Supplier will maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services and will provide such records to Macmillan with any invoices submitted or otherwise on request by Macmillan.

INTELLECTUAL PROPERTY RIGHTS

## As between Macmillan and the Supplier all Macmillan IPRs and Macmillan Property will remain the property of Macmillan.

## All Intellectual Property Rights in the Deliverables (but excluding the Supplier Works) will be owned by Macmillan. Accordingly, the Supplier hereby assigns to Macmillan, with full title guarantee and free from all third party rights and by way of present assignment of future rights, all existing and future Intellectual Property Rights and all other rights in the Deliverables (but excluding the Supplier Works). Insofar as they do not vest automatically by operation of law or under this agreement, the Supplier holds legal title in these rights on trust for Macmillan.

## At its own expense, the Supplier will, and will procure that any necessary third party will, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement, including securing for Macmillan all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to Macmillan in accordance with Clause 10.2.

## The Supplier warrants to Macmillan that each member of the Supplier’s Team is either employed by the Supplier under a written contract of employment or that Supplier has obtained from them a written and valid assignment of all existing and future Intellectual Property Rights in the Deliverables and of all materials embodying such rights (and agreement to hold on trust for the Supplier any such rights in which the legal title has not passed or will not pass to the Supplier) and has obtained from each of them a written irrevocable waiver of all the moral rights in the Deliverables, to the fullest extent permissible by law.

## All Supplier Works will remain the property of the Supplier. To the extent that any Supplier Works form part of the Deliverables, the Supplier grants Macmillan a perpetual, royalty-free, non-exclusive licence to use and as necessary to sublicense the Supplier Works as required to enable Macmillan to use the Deliverables. The Supplier warrants that it is entitled to grant Macmillan such licence and the grant of such licence and the use of the Supplier Works by Macmillan or anyone authorised to do so by Macmillan will not infringe the rights of any third party.

## The Supplier warrants that the Deliverables (whether in whole or in part) are original and use of the Deliverables and the Intellectual Property Rights in the Deliverables by Macmillan will not infringe the rights of any third party.

## The Supplier agrees to indemnify Macmillan and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by Macmillan, or for which Macmillan may become liable, with respect to any intellectual property infringement claim or other claim relating to the Deliverables and Services supplied by the Supplier (or any member of the Supplier’s Team) to Macmillan hereunder.

## Nothing in this Agreement will affect the ownership of any Intellectual Property Rights owned by either Party prior to commencement of this Agreement.

Liability

## Nothing in this Agreement will exclude or restrict the liability of either Party:

### for death or personal injury resulting from its negligence;

### for fraud or fraudulent misrepresentation; or

### in any other circumstances where liability may not be limited or excluded under any applicable law.

## Neither Party will be liable to the other for any loss of profits (other than profits directly and solely attributable to provision of the Services), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis.

## Subject to Clause 11.1 and save in respect of liability arising out of a breach of Clause 13 (Data Protection and Security), Macmillan’s liability under this Agreement will not exceed £25,000.

## The Supplier will maintain in force with a reputable insurance company:

### employer’s liability insurance of no less than £5 million per claim;

### professional indemnity insurance of no less than £1 million per claim;

### public and product liability insurance of no less than £2 million per claim;

### cyber insurance of no less than £1million per claim; and

### crime policy to cover fraudulent and other criminal activity of no less than £500,000 per claim,

## in respect of its obligations and liabilities under this Agreement and will, on Macmillan's request, produce the insurance certificate giving details of cover.

CONFIDENTIALITY

## The Parties undertake that they will not at any time during the Term, and for a period of five (5) years after expiry or termination of this Agreement (or such longer period as may be stipulated in Schedule 1), disclose to any person any Confidential Information except as permitted by Clause 12.2 provided always in relation to any Confidential Information involving any Personal Data, the provisions of Clause 13 (Data Protection and Security) will apply.

## Subject to Clause 12.6, Confidential Information does not include information that:

### is in the public domain or subsequently comes into the public domain other than as a result of breach of this Agreement by the other Party; or

### the Disclosing Party can prove was already lawfully in the disclosing Party’s possession before the information was given to the Disclosing Party, without any obligation of confidence in respect of it; or

### the Disclosing Party subsequently receives from a third party who was not under any obligation of confidence in respect of that information.

## Subject to Clause 12.6, a Party may disclose Confidential Information:

### to such of its employees, agents or consultants as need to know it for the purpose of discharging its obligations under this Agreement provided that the it will ensure that its employees, agents or consultants to whom it discloses the Confidential Information comply with this Clause 12; and/ or

### as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

## A Party will not use the other Party’s Confidential Information for any purpose other than to perform its obligations under this Agreement.

## Upon written request, each Party agrees to promptly destroy or return to the other Party all of the requesting Party’s Confidential Information (whether held in hard copy or electronically) including any copies, analyses and notes made by that Party in relation to the Confidential Information.

## The exceptions set out in Clause 12.2 and Clause 12.3 above will not apply to Personal Data, which will be and remain Confidential Information at all times and the provisions of Clause 13 (Data Protection and Security) will also apply.

data protection AND SECURITY

## Each of the Supplier and Macmillan hereby undertakes to, and the Supplier will procure that each of its subcontractors will, comply with their respective obligations under the Privacy and Data Protection Requirements. The Supplier and Macmillan acknowledge that for the purposes of the Privacy and Data Protection Requirements, Macmillan is the controller and the Supplier is the data processor and will comply with the additional terms and conditions as set out in Schedules 3 and 4.

## The Supplier will ensure that it has in place appropriate technical or organisational measures (if requested by Macmillan and as reviewed and approved by Macmillan) having due regard to the state of technological development and the cost of implementing such measures commensurate with the nature, risk and/or value of the Services, to protect against unauthorised or unlawful processing of Personal Data and Confidential Information and against accidental loss or destruction of, or damage to, Personal Data and Confidential Information, 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 and information to be protected, having regard to the state of technological development and the cost of implementing any measures. Such 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;

### regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it; and

### the Security Measures set out in Schedule 4.

ANTI-BRIBERY, Anti-slavery AND TAX EVASION

## The Supplier will comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010, and represents and warrants that (i) it has not engaged in and will not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 and (ii) it has and will maintain in place throughout the term of this Agreement its own policies and procedures to ensure compliance with this Clause 14.1, and will enforce them where appropriate.

## The Supplier will comply with all applicable laws, statutes, regulations and codes relating to modern slavery including the Modern Slavery Act 2015 and represents and warrants that it has, and will maintain in place throughout the term of this Agreement, its own policies and procedures to ensure that there is no modern slavery in the Supplier’s organisation or supply chain. The Supplier will further comply with and procure that its subcontractors comply with international standards on labour laws.

## Macmillan reserves the right to request to have the Supplier to remove any personnel from the provision of the Services and to report to the police any personnel alleged to have been involved in or taken part in or believed to be connected with fraudulent or other criminal behaviour. Such permission should not unreasonably be withheld by the Supplier, and should the Supplier replace any of its personnel providing the Services, the replacement will be at least as well qualified to provide the Services as required by the terms of this Agreement and all costs of handover will be borne by the Supplier. The Supplier will immediately report all instances of suspected fraud or irregularity to Macmillan.

## The Supplier will, and will procure that the Supplier’s Team will:

### not engage in any activity, practice or conduct which would constitute either:

#### a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or

#### a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;

### have and will maintain in place throughout the Term such policies and procedures as are reasonable in all the circumstances to prevent the facilitation of tax evasion by another person (including employees of the Supplier), in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017;

### promptly report to Macmillan any request or demand received by the Supplier or the Supplier’s Team from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017 in connection with the performance of this Agreement; and

### ensure that all persons associated with the Supplier or other persons who are performing any of the Services in connection with this Agreement comply with this Clause 14.4.

TERMINATION

## Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:

### the other Party commits a material or persistent breach of any of the terms of this Agreement and either that breach is irremediable or (if such breach is remediable) that Party fails to remedy the breach within a period of five (5) Business Days after being notified in writing to do so;

### the other Party 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), 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;

### the value of the other Party's assets is less than its liabilities (taking into account contingent and prospective liabilities);

### the other Party stops or suspends payment of any of its debts or is unable to, or admits its inability to, pay its debts as they fall due;

### the other Party commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its creditors with a view to rescheduling any of its indebtedness (because of actual or anticipated financial difficulties);

### a moratorium is declared in respect of any indebtedness of the other Party;

### the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

### any event occurs in relation to the other Party that is analogous to those set out in paragraphs 15.1.2 to 15.1.7 above (inclusive) in any jurisdiction.

## For the purposes of Clause 15.1.1, a material breach does not include non-payment by Macmillan in relation to disputed invoices.

## Macmillan may terminate this Agreement at any time with immediate effect upon service of written notice to the Supplier if the Supplier or any member of the Supplier’s Team:

### commits any act which results in or causes (i) Macmillan’s name to be brought into disrepute, contempt, scandal or ridicule or (ii) Macmillan to breach any of its charitable aims;

### refuses or neglects to comply with any reasonable and lawful directions of Macmillan;

### commits any fraud or irregularity in connection with this Agreement; and/ or

### is in breach of Clause 13 (Data Protection and Security) and/or Clause 14 (Anti-Bribery, Anti-Slavery and Tax Evasion).

## Macmillan may terminate this Agreement at any time with immediate effect upon service of written notice to the Supplier if:

### the Supplier’s financial position deteriorates to such an extent that, in Macmillan’s opinion, the Supplier’s capability to adequately fulfil its obligations to Macmillan has been placed in jeopardy; or

### there is a change of control of the Supplier (within the meaning of section 1124 of the Corporation Tax Act 2010).

## Any delay by Macmillan in exercising its rights to terminate will not constitute a waiver of these rights.

## In the event of the threatened seizure of the Deliverables or threatened appointment of a receiver or liquidator, or any other event entitling Macmillan to terminate this Agreement under this Clause 15, the Supplier will immediately notify Macmillan and Macmillan will be entitled to enter the Supplier’s premises and repossess the Deliverables, the Macmillan Property, the Macmillan IPR’s and the Confidential Information

## Macmillan may terminate this Agreement by giving to the Supplier not less than [three (3) months’] prior written notice.

## In the event that Clause 15.3.3 applies, in addition to its rights under Clause 15.3, Macmillan will be entitled to:

### recover from the Supplier the amount of any loss suffered by Macmillan resulting from the termination including the cost reasonably incurred by Macmillan of making other arrangements for the supply of the Services and any additional expenditure incurred by Macmillan;

### recover in full from the Supplier any other loss sustained by Macmillan in consequence of any fraud or irregularity committed by the Supplier or any of its personnel in connection with this Agreement, whether or not this has been terminated; and/or

### where Macmillan finds that the Supplier has deliberately submitted a false claim for payments in relation to this Agreement, recover in full from the Supplier the amount or value of such payment.

CONSEQUENCES OF TERMINATION property return

## On termination or expiry of this Agreement, the Supplier will:

### immediately deliver to Macmillan all Deliverables existing at the date of such termination or expiry, whether or not then complete. All Intellectual Property Rights in such materials will automatically pass to Macmillan (to the extent that they have not already done so by virtue of Clause 10.2), who will be entitled to enter the premises of the Supplier to take possession of them;

### immediately deliver to Macmillan any Macmillan Property, Macmillan IPRs and Confidential Information which is in its possession or under its control or, at Macmillan's request, and/or destroy the same;

### irretrievably delete any information relating to Macmillan stored electronically and all matter derived from such sources which is in its possession or under its control outside the premises of Macmillan; and

### on request, provide a signed statement that it has complied fully with its obligations under this Clause 16.

## If the Parties are in dispute when this Agreement terminates or expires, the Dispute Resolution process set out in Clause 21 (Dispute Resolution) will apply.

## On termination or expiry of this Agreement, the following Clauses will continue in force: Clause 10 (Intellectual Property Rights), Clause 11 (Liability), Clause 12 (Confidentiality), Clause 13 (Data Protection and Security), Clause14 (Anti-bribery, Anti-Slavery and Tax Evasion), this Clause 16 and Clause 25 (General).

## Termination or expiry of this Agreement will not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry.

Remedies

## If any Services are not supplied in accordance with, or the Supplier fails to comply with, any term of this Agreement, Macmillan will be entitled (without prejudice to any other right or remedy):

### to require the Supplier, without charge to Macmillan, to carry out such additional work as is necessary to correct the Supplier's failure;

### to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

### to purchase substitute services from elsewhere and recover from the Supplier any costs incurred by Macmillan in obtaining substitute services from a third party;

### where Macmillan has paid in advance for Services that have not been provided, to have such sums immediately refunded by Supplier; and/ or

### to claim damages for any additional costs, losses or expenses incurred by Macmillan which are in any way attributable to Supplier’s failure to meet its commitments.

## The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

FORCE MAJEURE

## The Parties agree that (i) neither Party will be in breach of this Agreement nor liable for delay in performing, any of its obligations under this Agreement and/ or (ii) Macmillan may defer the date for performance of, or payment for, the Services, in each case if it is prevented from, or delayed in, carrying on its business if such delay or failure results from events, circumstances or causes beyond its reasonable control including acts of God, war, fire or flood, pandemic or epidemic or rules or regulations of any authority asserting jurisdiction or control where compliance with such actions or rules and regulations makes continuance of this Agreement impossible, and whose effects they could not have avoided and cannot be overcome by the use of reasonable diligence and foresight.

## 18.2 In the circumstances referred to in Clause 18.1, the affected Party will be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for fourteen (14) days (the “**Force Majeure Period**”), the Party not affected may terminate this Agreement by giving fourteen (14) days' written notice to other Party. During the Force Majeure Period, the corresponding obligations of the other Party will be suspended and its time for performance of such obligations extended, to the same extent as those of the affected Party.

## 18.3 The affected Party will use all reasonable endeavours to mitigate the effect of the force majeure event on the performance of its obligations.

ASSIGNMENT AND OTHER DEALINGS

## The Supplier may not assign, transfer, mortgage, charge, declare a trust over or otherwise deal in any other manner with any of its rights and obligations under this Agreement unless Macmillan provides its prior written consent. Such consent, if given, may be subject to such terms and conditions as Macmillan may reasonably see fit to impose. In the event that Macmillan gives its consent as outlined above, the Supplier will remain primarily liable for the acts and omissions of any assignees, transferees or other third parties.

## Macmillan may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights under this Agreement.

NOTICES

## A notice given to a Party under or in connection with this Agreement will be sent, using the delivery method set out below, to the address set out at the beginning of this Agreement, to the email address below or to such other address that the other Party has notified to it in writing, and will be deemed received as follows:

|  |  |
| --- | --- |
| **Delivery method** | **Deemed delivery date and time** |
| By hand. | On signature of a delivery receipt. |
| Pre-paid first-class post or other next working day delivery service providing proof of postage. | 09:00 on the second Business Day after posting. |
| By email to the following address:  Macmillan: [legalenquiries@macmillan.org.uk](about:blank)  Supplier: [INSERT EMAIL ADDRESS] | At the time of transmission or, if transmitted after 17:00 on a Business Day, or on a non-Business Day, at 09:00 on the immediately following Business Day. |

## For the purposes of this Agreement, a written notice must be in writing, prepared on the headed paper of the Party serving the notice and signed by an authorised individual of that Party.

DISPUTE RESOLUTION

## If a dispute arises between the Parties, each Party will do everything that it can reasonably do to resolve the dispute by negotiation.

## If the dispute cannot be resolved by negotiation in accordance with Clause 21.1 within ten (10) days, the Parties may seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both Parties). Unless otherwise agreed, the Parties will bear the costs and expenses of the mediation equally.

Publicity

## Neither Party will publicise the Services without the prior written consent of the other Party.

## The Supplier will, and will procure that the Supplier’s Team will, consult with Macmillan’s communications staff before answering media enquiries in order to prepare an appropriate response.

STATUS

## Nothing in this Agreement is intended to, or will be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.

## The relationship of the Supplier to Macmillan will be that of independent contractor and nothing in this Agreement will render it (nor the Key Personnel nor any member of the Supplier’s Team nor any subcontractor) an employee, worker, agent or partner of Macmillan and the Supplier will not hold itself out as such and will procure that no member of the Supplier’s Team will hold themselves out as such.

## This Agreement constitutes a contract for the provision of services and not a contract of employment and, accordingly, the Supplier will not, and no member of the Supplier’s Team will, hold themselves out as such and the Supplier will be fully responsible for and will indemnify Macmillan for and in respect of:

### all tax liabilities whatsoever including any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit received by any member of the Supplier’s Team in respect of the Services, where such recovery is not prohibited by law (other than Macmillan's liabilities in respect of VAT properly payable by it).The Supplier will further indemnify Macmillan against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by Macmillan in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where and solely to the extent that the latter arise out of Macmillan's negligence or wilful default; and

### for all sums due to any member of the Supplier’s Team in relation to the services provided by any member of the Supplier’s Team on behalf of the Supplier and any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by any member of the Supplier’s Team against Macmillan arising out of or in connection with the provision of the Services, except where and solely to the extent that such claim is as a result of any act or omission of Macmillan.

## The Supplier undertakes that it is not, nor will it prior to the cessation of this Agreement and completion of the Services, become a managed service company within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

SUPPORTING MACMILLAN CANCER SUPPORT

## Macmillan encourages all of its suppliers, partners and consultants to support Macmillan in its charitable aim to improve the lives of people affected by cancer. The Supplier and members of Supplier’s Team are encouraged to support Macmillan - for example by hosting a coffee morning, by backing a Macmillan campaign, by lending staff to volunteer with Macmillan, by supporting a fundraising event, or by signposting people to Macmillan's services. Details of all the ways to support Macmillan and how to get involved can be found on Macmillan's website: [www.macmillan.org.uk](about:blank).

GENERAL LEGAL PROVISIONS

## If any provision of this Agreement is declared void, voidable, illegal or otherwise unenforceable by any competent authority or court, or any indication to that effect is received from any competent authority or court, the Parties will co-operate to amend the offending provision in such manner as to achieve its intention. If such amendment is not possible, the relevant provision or part-provision will be deemed deleted. Notwithstanding any such amendment or deletion, the remainder of this Agreement will remain valid and in full force.

## Failure to insist upon strict performance of this Agreement, or failure to exercise any right or remedy to which a Party is entitled will not constitute a waiver.

## This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter, including any terms or conditions of the Supplier attached to any proposal, order form, tender or similar.

## This 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) will be governed by and construed in accordance with the law of England and Wales.

## Each Party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## No variation or waiver of this Agreement or any part of it will be effective unless made in writing, signed by or on behalf of all of the Parties and expressed to be such a variation or waiver.

## Any waiver of any right or remedy under this Agreement is only effective if given in writing and will not be deemed to be a waiver of any subsequent breach or default.

## No person other than a Party to this Agreement will have any rights to enforce any term of this Agreement whether under the Contract (Rights of Third Parties) Act 1999 or otherwise.

## This Agreement may be executed in any number of counterparts, each of which when executed will constitute an original of this Agreement, but all the counterparts will together constitute the same Agreement.

Entered into by the Parties on the date set out above.

|  |  |
| --- | --- |
| Signed by  duly authorised for and on behalf of  **MACMILLAN CANCER SUPPORT** | ) ………………………………………… Signature  )  ) ………………………………………… Name |
| [Signed by  duly authorised for and on behalf of  **MACMILLAN CANCER SUPPORT** | ) ………………………………………… Signature  )  ) ………………………………………… Name] |
| Signed by  duly authorised for and on behalf of  **[SUPPLIER]** | ) ………………………………………… Signature  )  ) ………………………………………… Name |
|  |  |

**SCHEDULE** **1**

**SERVICES**

*Description of services and deliverables to be provided under the statement of work. Include: Key personnel (if any), targets, delivery dates, expected deliverables and wording from the Supplier’s proposal if appropriate.*

|  |  |
| --- | --- |
| **Project:** | *Include project title and brief description* |
| **Supplier:** | *Insert name, registered details and VAT No.* |
| **Services Commencement Date:** | *Insert start date for the Services* |
| **End Date:** | *Insert end date of the Agreement if it is to automatically expire* |
| **Services:** | *Describe the services in detail – attach a separate document if easier BUT if there are any attachments, must contain clear obligations and must not conflict with the terms of the contract.*  *Include if appropriate:*  *Aims and objectives:*  *Methods:*  *Stages:*  *Timescales and any key dates:*  *Key Milestones:* |
| **Deliverables:** | *e.g. reports etc.*  *Include any detailed specifications* |
| **Special Terms:** | *Is there anything particular to this project that varies the standard terms?* |
| **Key Personnel:** | *insert names of any Supplier Key personnel* |
| **Reporting:** | *e.g. weekly face to face/fortnightly etc. Insert details of to whom in Macmillan the Supplier’s Teams will report.* |

Schedule 2

Pricing

Part 1 – Price

Macmillan will pay the Supplier the amount of £[INSERT TOTAL COST IN WORDS AND FIGURES] (the “**Price**”).

[INCLUDE DETAILS OF PRICE, FOR EXAMPLE THE FIXED PRICE OR DAILY RATE (BASED ON A WORKING DAY (AS DEFINED).)]

## The Supplier will add a charge of VAT (if applicable) at the applicable rate on all invoices to Macmillan.

PART 2 – PAYMENT

The Price will be payable as follows:

[INCLUDE A PAYMENT SCHEDULE, WHICH SHOULD INCLUDE THE DATES OR EVENTS ON WHICH INSTALMENTS ARE TO BE INVOICED (MILESTONES FROM SCHEDULE 1) AND THE AMOUNT OF EACH INSTALMENT. PLUS THE APPLICABLE VAT IF ANY, PLUS THE FOLLOWING PROVISIONS:

Macmillan will endeavour to pay all undisputed invoices within 30 days of receipt.

Invoices will be submitted in pdf format to [p2p@macmillan.org.uk](about:blank) 30 days prior to the invoice due date, quoting the name of the Macmillan client and purchase order number.

**PART 3 – SPECIAL BUDGETARY REQUIREMENTS**

[INSERT ANY SPECIAL CONSIDERATIONS AND OBLIGATIONS ON SUPPLIER OR STATE ‘NONE’]

**SCHEDULE 3**

**DATA PROCESSING**

**Definitions**

In this data processing Schedule, unless the context otherwise requires, the definitions used are as set out in the main body of the Agreement and also the following special definitions will apply:

“**Personal Data**” means any information relating to an identified or identifiable natural person that is processed by the Supplier as a result of, or in connection with, the provision of the services under the Initial Agreement; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

“**Personal Data Breach**” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.

“**Personnel**” has the meaning given to it in Paragraph 4.8.

“**Purpose**” means the purpose of processing of the Personal Data as set out in Annex 1 to this Schedule.

1. This Schedule 3 will apply to all Personal Data processed by the Supplier and the Supplier agrees to comply with the terms of this Schedule.
2. Macmillan and the Supplier acknowledge that, for the purpose of the Privacy and Data Protection Requirements, Macmillan is the controller and the Supplier is the data processor of all Personal Data.
3. The Supplier shall process the Personal Data on behalf of Macmillan solely for the Purpose and for no other purpose except with Macmillan’s prior written consent. The Supplier will keep a record of any processing of Personal Data it carries out on behalf of Macmillan.
4. The Supplier warrants and undertakes:

4.1 to comply with the security measures detailed in Schedule 4;

4.2 not to do anything which would result in Macmillan being in breach of its obligations under the Privacy and Data Protection Requirements;

4.3 to comply with the Privacy and Data Protection Requirements;

4.4 to treat the Personal Data as confidential and process it only in accordance with Macmillan’s written instructions;

4.5 to notify Macmillan immediately by emailing infogov@macmillan.org.uk if it becomes aware of any unauthorised or unlawful processing, loss of, damage to or destruction of the Personal Data and will use all reasonable efforts to restore such Personal Data at its own expense;

4.6 that, having due regard to the state of technological development and the cost of implementing such measures, it shall maintain at its own expense appropriate technical and organisational measures to keep the Personal Data secure and ensure a level of security appropriate to (i) the harm that might result from the unauthorised or unlawful processing of or accidental loss, destruction or damage to such Personal Data and (ii) the nature of the Personal Data to be protected;

4.7 that processes and procedures are in place to comply promptly with any Macmillan request relating to the Personal Data including but not limited to (i) rectify Personal Data, at database level, including all back-up media, if required, (ii) securely and irretrievably make Personal Data unrecoverable, at database level, including all back-up media, if required, (iii) assist with the restriction or temporary suspension of Personal Data and (iv) assist with the transfer or portability of Personal Data;

4.8 not to disclose or make Personal Data available whether directly or indirectly to any third party without the express written consent of Macmillan, except to those of its officers, employees, contractors, volunteers and/ or agents (“**Personnel**”) for whom it is strictly necessary have access to such Personal Data in connection with the Purpose and in relation to those Personnel (i) taking all reasonable steps to ensure that they are reliable, (ii) ensuring they are aware of the obligations in this Paragraph 4 regarding the security and protection of the Personal Data, (iii) making them subject to appropriate contractual confidentiality and security obligations in relation to the Personal Data which are at least equivalent to those under this Agreement and (iv) ensuring they have undertaken training on the Privacy and Data Protection Requirements relating to handling Personal Data and how it applies to their particular duties. For the avoidance of doubt, any such disclosure shall not relieve the Supplier of its obligations to comply fully with this Agreement and the Supplier shall remain fully responsible and legally liable for ensuring full compliance with this Paragraph in all respects;

4.9 that, at Macmillan’s request, it will provide to Macmillan a copy of all Personal Data held by it or under its control, in the format and on the media reasonably specified by Macmillan;

4.10 that it will keep adequate records of the processing activities, the technical and organisational security standards;

4.11 that it shall inform Macmillan as to the countries where the Personal Data is being processed and the legal basis for the transfer, and not transfer Personal Data outside the UK without seeking Macmillan’s prior written consent at least one month in advance of such proposed transfer. If Macmillan consents to the transfer then it will be subject to such measures as Macmillan deems reasonably necessary to comply with the Privacy and Data Protection Requirements. If Macmillan does not consent or the Supplier refuses to comply with Macmillan’s reasonable instructions as to the conditions of the transfer, then Macmillan shall have the right to terminate this Agreement before such transfer takes place without further liability. Macmillan consents to the transfer to the countries listed in Annex 1;

4.12 in the event that Macmillan has consented under Paragraph 4.11 to transfers to countries outside the UK which have adequacy status, and the UK subsequently no longer recognises such countries as having adequacy status, the Supplier shall promptly notify Macmillan and Macmillan shall have the right to inform the Supplier that processing in such countries is no longer acceptable to Macmillan, in which case the Supplier must take steps to transfer the data back to the UK within one month, or ensure that the processing can continue to be carried out lawfully in such countries (at Macmillan’s discretion); and

4.13 where there is a transfer of any Personal Data outside the UK, the legal basis for this will be set out in an additional Annex to this Agreement.

1. The Supplier will provide Macmillan, upon Macmillan’s reasonable request, evidence to Macmillan’s reasonable satisfaction that it can comply with the above obligations.
2. The Supplier will:

6.1 be liable for any misuse of Personal Data or any negligent or reckless disclosure or loss of Personal Data by any of its Personnel (Macmillan confirms that the Supplier’s expected use of the Personal Data for the Purpose as specifically instructed by Macmillan will comply with the Privacy and Data Protection Requirements);

6.2 notify Macmillan by emailing [infogov@macmillan.org.uk](about:blank) without delay, and in any event within 24 hours, where it becomes aware of such misuse, disclosure or loss as referred to above; and

6.3 indemnify Macmillan against all claims, actions, losses, damages, liabilities, penalties, fines or awards and any expenses (including reasonable professional legal fees) which may arise out of any actual or alleged breach of the Supplier’s obligations under this Agreement, including but not limited to any investigations or actions by the Commissioner and any limitation of liability under this Agreement shall not apply to this Agreement’s indemnity or reimbursement obligations.

1. The Supplier:
   1. will notify Macmillan promptly by emailing [infogov@macmillan.org.uk](about:blank), (and in any event not later than within 36 hours) of any complaint, request, notice or communication it receives relating to processing of any Personal Data or to either Party’s compliance with the Privacy and Data Protection Requirements and the data protection principles set out therein, from (i) a data subject, (ii) the Commissioner or (iii) any other competent supervisory authority, promptly forwarding a copy of such complaint, request, notice or communication to Macmillan, and not responding without Macmillan’s prior written consent;
   2. in respect of any complaint, notice or communication shall provide Macmillan with full co-operation and assistance in relation to any such complaint, notice or communication;
   3. will co-operate with Macmillan if Macmillan requires a data protection impact assessment to be carried out;
   4. agrees to allow, and shall procure that its Personnel shall allow Macmillan, by Macmillan’s own personnel or by professionally qualified independent auditors, access to all documentation pertaining to the Purpose, on not less than five (5) days’ written notice, at any time during normal business hours for the purpose of auditing Supplier’s compliance with its obligations under this Agreement and/ or to comply with any subject access request Macmillan may receive in accordance with the Privacy and Data Protection Requirements;
   5. will, and shall procure that its Personnel will, afford to Macmillan, and its auditors all reasonable assistance in the carrying out of the audits referred to in this Schedule, including physical access to records, electronic access to records, inspections of infrastructure, applications, equipment and systems used to process the Personal Data and meetings with the Supplier’s Personnel to provide explanations to enable Macmillan to carry out the audit effectively, and shall allow Macmillan or its auditors to take copies of relevant documentation, without charge;
   6. will generally co-operate with Macmillan in respect of any investigation undertaken by the Commissioner that relates to processing of the Personal Data;
   7. if a Personal Data Breach occurs or is occurring, or if the Supplier becomes aware of a breach of any of its obligations under this Schedule, the Supplier will:

7.8.1 promptly conduct its own audit to determine the cause;

7.8.2 promptly produce a written report that includes detailed plans to remedy any deficiencies identified by the audit;

7.8.3 provide Macmillan with a copy of the written audit report; and

7.8.4 remedy any deficiencies identified by the audit within seven (7) days.

1. The requirement under Paragraph 7.4 to give notice of an audit will not apply if Macmillan believes that the Supplier is in breach of any of its obligations under this Agreement.
2. It is agreed that:
   1. if a change in any Privacy and Data Protection Requirements prevents either Party from fulfilling all or part of its obligations in this Agreement, the Parties will suspend the processing of Personal Data until that processing complies with the new requirements. If the Parties are unable to bring the Personal Data processing into compliance with the Privacy and Data Protection Requirements within fourteen (14) days, Macmillan may terminate this Agreement on written notice to the Supplier;
   2. upon termination of this Agreement for whatever reason, or upon Macmillan’s written request, the Supplier shall immediately cease processing Personal Data and, except to the extent that the Supplier is compelled to maintain any Personal Data under applicable law, or to the extent necessary while winding-up the services (which winding-up of the services shall be subject to a data processing agreement on substantially the same terms as set out herein), it shall at its own expense and as directed in writing by Macmillan (i) if requested to do so, return, and (ii) securely and irretrievably make unrecoverable all such Personal Data. Upon Macmillan’s request, a Director of the Supplier shall confirm in writing on the Supplier’s headed paper that such Personal Data has been securely and irretrievably made unrecoverable within fourteen (14) days of the Personal Data deletion. Upon Macmillan’s request, the Supplier shall allow Macmillan’s data auditor access to its systems to ensure that the Personal Data has been securely and irretrievably made unrecoverable;
   3. the Supplier’s failure to comply with the terms of this Schedule is a material breach. In the event of a breach of this Schedule, Macmillan may terminate the Agreement or any part of it authorising the processing of Personal Data, effective immediately on written notice to the Supplier without further liability or obligation; and
   4. termination of this Agreement will not affect the Parties’ accrued rights and any provision of this Agreement that expressly or by implication should come into or continue in force on or after termination of the Agreement in order to protect Personal Data will remain in full force and effect.
3. The Supplier may not subcontract performance of any of its obligations in relation to processing of Personal Data without Macmillan’s prior written consent and such subcontractor entering into an agreement on the same or similar terms as this Schedule and Schedule 4. Macmillan consents to the use of the subcontractors set out in Annex 1.

**ANNEX 1**

**REQUIRED INFORMATION ABOUT THE DATA PROCESSING**

|  |
| --- |
| **Supplier’s name (with company number)**: [•] |
| **Start date:** [•] |
| **Duration of processing (with end date if known)**: [•] |
| **Purpose of processing:** [•] |
| **Processing Activities:** [e.g storage, collection, collation, transmission, analysing, structuring, organising, computer hosting, manual handling of data, erasure of data at the end of the Agreement, etc]  and any other processing performed under this Agreement. |
| **Classes of Data Subject**:  [e.g. supporters, beneficiaries, employees] |
| **Classes of Personal Data to be processed**:  [E.g. Name, Age, Sex, Health Data, Post Code, Email Address]  and any other personal data processed under this Agreement. |
| **Persons authorised to access the Personal Data**: [•] |
| **Specific Requirements (if any)**: [•] |
| **Approved Sub-contractors (registered company details and a description of their processing)**: [•] |
| **Data Protection Officer (if applicable) for Supplier**: [•]  **Data Protection Officer for Macmillan**: email: [infogov@macmillan.org.uk](about:blank) |
| **International Transfers** (list any countries outside UK):  Where there will be a transfer outside the UK, please state the Supplier’s legal basis for processing in order to comply with cross border transfer restrictions (select one):    Located in a country with a current UK determination of adequacy (list country): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.  Binding Corporate Rules.  International Data Transfer Agreement between Macmillan as “data exporter” and the Supplier as “data importer”  International Data Transfer Agreement between the Supplier as “data exporter” on behalf of Macmillan and the Supplier affiliate or subcontractor as “data importer”.  Other (describe in detail): |

**SCHEDULE 4**

**SECURITY MEASURES**

1 The Supplier will, having due regard to the state of technological development and the cost of implementing such measures, ensure that in respect of all Personal Data it maintains security measures to a standard which shall be appropriate to:

1.1 the harm that might result from unlawful or unauthorised processing or accidental loss, damage or destruction of the Personal Data; and

1.2 the nature of the Personal Data.

2 In particular the Supplier shall:

2.1 have in place and comply with a security policy, or suite of policies, which:

2.1.1 defines security needs based on a risk assessment;

2.1.2 if relevant, is compliant to PCI DSS Compliance at the associated level for the business;

2.1.3 allocates responsibility for implementing the policy to a specific individual or members of staff with the right skill, knowledge and training to fulfil the responsibility;

2.1.4 is provided to Macmillan on request;

2.1.5 is disseminated to all Personnel (as defined in Schedule 3); and

2.1.6 provides a mechanism for feedback and review.

2.2 ensure it aligns with ISO27001:2013 and, at Macmillan’s reasonable request, implement, and maintain at all times, the requirements of the information security management standard ISO/IEC 27001, and the scope of the information security management system (ISMS) must cover all personnel, sites and systems used in the delivery of the service to Macmillan;

2.3 ensure the hardware and software used in processing the Personal Data are running up to date commercially available anti-virus software;

2.4 prevent unauthorised access to the Personal Data;

2.5 ensure its method of storing Personal Data is secure including the keeping of media on which Personal Data is recorded in secure locations and controlling access by Personnel to locations where Personal Data is stored, including having controlled access to buildings and rooms;

2.6 use such methods for the transfer of Personal Data whether in physical form (for instance, by using couriers rather than post) or electronic form (for instance, by using encryption for emails) as are used by or otherwise agreed with Macmillan;

2.7 put password protection with appropriate industry recognised levels of complexity on computer systems on which Personal Data is stored and ensure that only authorised Personnel are given details of the password. Domain passwords must be changed whenever an individual with access leaves or changes role, or every three (3) months, whichever is sooner;

2.8 prevent computer screens which are displaying Personal Data from being overlooked by unauthorised persons;

2.9 ensure that all individuals who have access to the Personal Data are reliable and are trained how to comply with the Privacy and Data Protection Requirements and in particular all Personnel involved in processing Personal Data receive appropriate data protection training and understand their responsibilities under the Privacy and Data Protection Requirements in respect of Personal Data supplied by and/ or processed on behalf of Macmillan;

2.10 have in place methods for detecting and dealing with breaches of security and having a proper procedure in place for investigating and remedying breaches of data protection procedures;

2.11 ensure back-up copies of the Personal Data are stored securely and separately from the live files and have a secure procedure for backing up and storing back-ups separately from originals, and a tried and tested procedure for the timely restoration of data from the back-up copies if and when needed;

2.12 provide secure destruction of documents and electronic storage media containing Personal Data including but not limited to having a secure method of disposal for back-ups, disks and print outs;

2.13 have adequate precautions against burglary, fire or natural disaster to the extent that they may affect the Personal Data;

2.14 have procedures for full deletion before re-use of magnetic media (to prevent possible recovery by an unauthorised party);

2.15 not, without Macmillan’s prior written consent, allow removal, transfer or transmission (whether physically or electronically) of any Personal Data (or copies thereof) or storage of such Personal Data on any computer, mobile communications or electronic storage device without first ensuring that such Personal Data is appropriately secured; and

2.16 inform Macmillan as to the location(s) where the Personal Data is being processed and not transfer Personal Data outside the UK without seeking Macmillan’s prior written consent, subject to such measures as Macmillan deems reasonably necessary to comply with the Privacy and Data Protection Requirements.

3 The Supplier shall ensure the Personal Data is processed, recorded, organised and stored in a manner and format which preserves the integrity of the Personal Data and in particular:

3.1 does not diminish the value of the Personal Data;

3.2 (where applicable), is kept up to date and cleansed on a regular basis as agreed between the Supplier and Macmillan;

3.3 prevent unnecessary duplication of Personal Data; and

3.4 meets Macmillan’s requirements for reporting and review meetings.

4 The Supplier shall record, organise and store the Personal Data according to Macmillan’s written instructions as communicated from time to time during the Term including but not limited to instructions communicated following any Macmillan audit under this Agreement.