



## 1. DEFINITIONS

**Applicable Privacy Laws:** the GDPR, the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

**Contract:** these terms and conditions, the Specification and the Order and any Schedules and any documents forming the tender or offer by the Supplier and acceptance by Marie Curie including: the Proposal to Marie Curie and any costings from the Supplier;

**Deliverables:** any documents, products or materials provided by the Supplier or its employees, agents or contractors as part of or in relation to the Contract (other than the Goods), including without limitation, drawings, maps, plans, diagrams, designs, pictures, computer software, data, specifications and reports (including drafts);

**Goods:** the goods (or any part of them) set out in the Specification and/or the Order;

**GDPR:** European General Data Protection Regulation (EU) 2016/679 and 'personal data', 'controller', 'processor', 'data subject', 'process', 'personal data breach', 'Commission' and 'supervisory authority' each have the meanings contained in the Applicable Privacy Laws; (references to a 'supervisory authority' shall include reference to the ICO);

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions, and all similar or equivalent rights or forms of protection in any part of the world;

**Marie Curie:** either Marie Curie, a registered charity (registered company number 507597 and registered charity numbers 207994 (England & Wales) and SC038731 (Scotland)) whose address is One Embassy Gardens, 8 Viaduct Gardens, London SW11 7BW; or its affiliate (and wholly owned subsidiary) Marie Curie Trading Limited, whose registered company number is 2292795 and whose address is One Embassy Gardens, 8 Viaduct Gardens, London SW11 7BW, as named on the Order;

**Order:** Marie Curie's order for the supply of Services, Deliverables and/or where applicable Goods, as set out in Marie Curie's purchase order, the Specification, or in its written acceptance of the Supplier's quotation, as the case may be;

**Regulatory Body:** means any government department and regulatory, statutory and other body, entity and committee which, whether under statute, rule, regulation, code of practice or otherwise, is entitled to regulate, investigate or influence the matters dealt with in the Contract and / or the parties to the Contract (as the case may be);

**Services:** the services, including any Deliverables, to be provided by the Supplier as set out in the Order;

**Specification:** the description or specification for Services agreed in writing by Marie Curie and the Supplier, including any statement of work;

**Supplier:** the party named in the Order as the supplier of the Goods and/or Services;

**Supplier's Personnel:** the Supplier's officers, employees, agents, sub-contractors or any person acting on its behalf;

**Tobacco Company(ies):** a company, entity or organisation (or groups or combinations of the same) any part of whose business is the development, production, promotion, marketing, and/or sale of tobacco or tobacco products in any country of the world, or an affiliate of the same; and

**TUPE:** means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

## 2. STATUS OF CONTRACT

The Contract forms the entire agreement between the Supplier and Marie Curie and supersedes any prior agreements whether oral or written, save where there is a valid and subsisting agreement relating to the same subject matter already in place between Marie Curie and the Supplier (being an agreement other than on Marie Curie's standard terms). Save as expressly agreed in writing and signed by a duly authorised officer of each party these terms and conditions will prevail over any standard terms provided by the Supplier. If there is any inconsistency within the Contract, these terms and conditions will prevail over other parts of the Contract unless the contrary is expressly stated.

## 3. COMMENCEMENT AND TERM

The Contract will commence on the date specified in the Order or Specification and continue for the duration set out therein, or if not specified, until delivery of the Goods or completion of the Services, unless terminated pursuant to Clause 6 or 13.

## 4. DELIVERABLES AND GOODS

The Supplier will ensure that the Deliverables and/or Goods correspond to their description and this Contract, are of satisfactory quality and fit for purpose, free from defects in design, materials and workmanship and remain so for 12 months after delivery (or any longer period stated elsewhere in the Contract). The Supplier will replace or correct any deficiency at its own expense.

The Supplier will deliver the Deliverables and/or Goods on the date specified in the Contract or, if no date is specified, within ten days of the date of the Order.

Title and risk shall pass to Marie Curie on acceptance in writing by Marie Curie. Signature to acknowledge delivery shall not be evidence that the items are complete and free from damage at the time of delivery.

## 5. SERVICES

The Supplier shall provide the Services on the dates specified in the Contract. If no dates are specified, then the Supplier shall commence the Services as soon as practicable and complete the Services in a timely manner in accordance with any Specification.

**Warranties:** The Supplier warrants and agrees that it has full power and authority to execute, deliver and perform its obligations under the Contract and it shall, on an ongoing basis:

- a) comply with all Marie Curie's reasonable instructions in relation to the Services;
- b) comply with all applicable law, regulation, guidance and codes of practice;
- c) obtain and maintain at all times all licences and consents required for the Goods and/or Services and shall comply with all applicable laws and regulations of any appropriate Regulatory Body, and or professional or trade association and any other rules and security arrangements of Marie Curie;
- d) use personnel who are suitably qualified, skilled and experienced;
- e) ensure that the Goods and/or Services conform with the Order and any descriptions or proposals supplied or as advertised by the Supplier and that they are fit for any purpose expressly or impliedly made known to the Supplier by Marie Curie;
- f) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- g) use the best quality goods, materials, standards and techniques, and ensure that all goods and materials supplied and used in the Goods and/or Services are free from defects in workmanship, installation and design;
- h) perform the Services with the highest level of care, skill and diligence in accordance with best practice in the Suppliers' industry, profession or trade;
- i) ensure any analysis is accurately conducted using best industry practice;
- j) ensure that the Services shall be supplied in such a way as not to cause any fault or malfunction in any system of Marie Curie, and/or interruption to the business processes of Marie Curie;
- k) not introduce any Viruses into the Marie Curie systems. Viruses include any "back door", "time bomb", "trojan horse", "worm", "drop dead device", "virus" or other computer software routine or malware intended or designed to: i) disable, damage, erase, disrupt or impair the normal operation of; or ii) provide unauthorised access to or modification of computer systems or any software or information saved on those computer systems; and
- l) not become a Tobacco Company or controlled by a Tobacco Company, a major investor in a Tobacco Company, a significant advisor or consultant to a Tobacco Company, able to exert a significant influence upon the business of a Tobacco Company, publicly associated as being involved in the manufacture, promotion, marketing or sale of tobacco products, or involved in significant commercial arrangements with a Tobacco Company(ies).

## 6. MARIE CURIE REMEDIES

If the Supplier fails to deliver the Goods and/or perform the Services in accordance with its obligations, Marie Curie shall, without limiting its other rights or remedies, have one or more of the following rights. Marie Curie may:

- a) terminate the Contract by giving written notice to the Supplier;
- b) in the case of Deliverables/Goods, reject the Deliverables/Goods whether or not title has passed;
- c) refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- d) recover from the Supplier any costs incurred by Marie Curie in obtaining substitute goods and/or services; and
- e) receive a refund from the Supplier if Marie Curie has paid in advance for Services or Goods that have not been provided by the Supplier in accordance with its obligations.

## 7. CHARGES AND PAYMENT

**Charges:** The charges for the Goods and/or Services will be the price set out in the Order, or if no price is quoted, as agreed in writing between the parties.

All charges are exclusive of VAT and inclusive of all costs and expenses, including in the case of Goods, the costs of packaging, insurance and carriage. No other charges will be payable unless agreed in writing by Marie Curie.

**Invoicing:** Unless otherwise stated in the Order, the Supplier will invoice Marie Curie after completion of delivery of Goods or performance of Services and all invoices must include the relevant purchase order number and be sent to APInvoicesLND@mariecurie.org.uk.

**Payment:** Marie Curie will pay invoices within 30 days of receipt of a valid and undisputed invoice.

If Marie Curie fails to pay any undisputed amount properly due and payable by it under the Contract, the Supplier may charge interest on the overdue amount at the rate of 2% per annum above the base rate for the time being of The Bank of England from the due date up to the date of payment.

Marie Curie may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by Marie Curie to the Supplier.

**Records:** The Supplier will maintain complete and accurate records of Goods delivered, and of time spent and materials used in providing the Goods and Services and Marie Curie may inspect such records on request.

## 8. INTELLECTUAL PROPERTY RIGHTS

**Warranty:** In respect of the Goods and Deliverables the Supplier warrants that it has full and unencumbered title and unrestricted rights to sell and transfer the Goods to Marie Curie.

**Retained IP:** Each party will retain all rights in its pre-existing Intellectual Property Rights, together with any modifications or derivatives ("**Retained IP**"). All materials, equipment, tools, drawings, specifications and data provided by Marie Curie to the Supplier, and the Intellectual Property Rights in them, are the exclusive property of Marie Curie. The Supplier has no right to use the Marie Curie name and logo unless expressly granted in the Contract.

**Developed IP:** The Supplier hereby assigns to Marie Curie, with full title guarantee and free from all third party rights, all Intellectual Property Rights in materials generated from the Services, including the Deliverables ("**Developed IP**"). The Supplier hereby grants to Marie Curie a royalty-free, worldwide, perpetual and irrevocable licence to use and modify any Retained IP of the Supplier or third parties so far as is necessary to use, copy and modify any Developed IP.

**Waiver and Execution:** The Supplier shall obtain waivers of all moral rights in those materials to which any individual is now or may be at any future time entitled.

The Supplier shall do all such acts and execute of all such documents as Marie Curie may require for the purpose of securing for Marie Curie the full benefit of the Contract.

## 9. INDEMNITY AND INSURANCE

**Indemnity:** The Supplier shall indemnify and keep Marie Curie

indemnified against any and all liability, costs (including legal costs), expenses, claims in tort, damages and losses (whether direct or indirect) incurred by Marie Curie as a result of or in connection with (a) the supply and/or receipt and use of Goods (if any) and/or Services and Deliverables (b) any breach of data protection laws and regulations (c) any breach of the Contract by the Supplier and/or (d) any infringement of any Intellectual Property Right resulting from the Supplier's provision of Goods or performance of the Services or from Marie Curie's use of the Goods, Retained IP, Developed IP and/or Services.

**Insurance:** For the duration of the Contract and for two years thereafter, the Supplier shall maintain in force, with a reputable insurance company:

- a) employer's liability insurance with a limit of at least £5 million for claims arising from a single event or series of related events in a single calendar year;
- b) public liability insurance with a limit of at least £5 million per claim;
- c) where appropriate, product liability insurance with a limit of at least £2 million for claims arising from a single event or series of related events in a single calendar year; and
- d) where appropriate, professional indemnity insurance with a limit of at least £2 million for claims arising from a single event or series of related events in a single calendar year,

to cover the liabilities that may arise under or in connection with the Contract and shall, on Marie Curie's request, produce full details of such cover.

**Limitation of liability:** The maximum aggregate liability of Marie Curie in relation to this Contract whether in contract, tort or otherwise, shall not exceed the annual charges payable to the Supplier under this Contract, excluding liability for fraud, death or personal injury or other liability that cannot be limited by law.

## 10. CONFIDENTIALITY

**Confidentiality:** Each party shall keep in strict confidence all information of a confidential nature that has been disclosed by the other party, its employees, agents or subcontractors, including any information concerning the management, business, finances, affairs, staff, volunteers, patients, donors or Suppliers of Marie Curie and the fact that the Supplier has contracted with Marie Curie.

If requested by the provider of confidential information at any time, the recipient shall immediately securely destroy or return to the provider all documents and other records of the Confidential Information that have been supplied to or generated by the recipient.

**Exceptions:** This clause will not restrict disclosure of information which is: a) in the public domain (other than as a result of a breach of the Contract); b) already in the lawful possession of the receiving party; c) required to be disclosed by a court or other competent authority; or d) properly disclosed on a confidential basis to staff or agents of the receiving party on a need to know basis for the purposes of the Contract, provided that the receiving party will remain responsible for the preservation of confidentiality by such parties.

## 11. DATA PROTECTION

To the extent that the Supplier is required, in order to perform the Contract, to process any personal data on behalf of Marie Curie, the Supplier shall comply with (i) its own internal policies on protecting the privacy and security of personal data, (ii) Applicable Privacy Laws, and (iii) Marie Curie's additional terms and conditions regarding data protection which are available online at <https://www.mariecurie.org.uk/globalassets/media/documents/who-we-are/governance/data-protection-clauses-for-marie-curie-standard-terms-conditions-oracle-april-2022-edition.pdf> and which form part of the Contract, at all times when processing personal data in connection with (or which it has received from Marie Curie in connection with) the Contract.

## 12. COMPLIANCE

The Supplier warrants (on an ongoing basis) and undertakes to Marie Curie that:

- a) none of the Supplier the Supplier's Personnel or the Supplier's suppliers has committed or been investigated for an offence involving bribery, corruption or slavery;
- b) it will comply with all applicable trade and financial sanctions laws and regulations;
- c) it will comply with all applicable laws, including the Bribery Act

2010, regulations and codes of conduct in relation to anti-bribery and anti-corruption and the Modern Slavery Act 2015;

- d) it shall maintain, implement and comply with its own policies and procedures for compliance with law and regulation, including the Bribery Act 2010 and Modern Slavery Act 2015 and shall comply with any additional policy requirements stipulated by Marie Curie or any Regulatory Body;
- e) neither the Supplier nor any of the Supplier's Personnel has offered, given or agreed to give any person any inducements or reward (or anything which might be considered an inducement or reward) in connection with this Contract or supplying the Goods or performing the Services; and
- e) it shall notify Marie Curie immediately in writing if it becomes aware that it or any of the Supplier's Personnel is in breach of this clause.

The Supplier shall have an active, and regularly reviewed, Environment & Sustainability Policy that sets out its environmental, social and governance goals, SMART targets and actions to minimise and mitigate the impact of its operations. Where applicable, the Supplier will comply with legal requirements relating to streamlined energy and carbon reporting.

The Supplier shall (i) maintain a complete set of records to trace the supply chain of all Goods and Services provided to Marie Curie in connection with this Contract; (ii) from time to time implement its own audits of its compliance and its subcontractors' and suppliers' compliance with the Modern Slavery Act 2015, either directly or through a third party auditor; and (iii) permit Marie Curie and its third party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of this clause 12 to have access to and take copies of the Supplier's records and any other information and to meet with the Supplier's personnel to audit the Supplier's compliance with its obligations contained in this clause 12.

### 13. TERMINATION

Marie Curie may terminate the Contract at any time by giving the Supplier at least twenty-eight days' prior written notice.

Marie Curie may terminate the Contract with immediate effect by giving notice to the Supplier if the Supplier:

- a) commits a material breach of this Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of receipt of notice of the breach or acts in a manner which is in Marie Curie's sole opinion potentially damaging to the reputation of Marie Curie;
- b) commits any breach of clauses 11 (Data Protection) or 12 (Compliance) or any persistent breaches of any provision of this Contract;
- c) becomes subject to any sanction or order whereby it would become illegal or contrary to Marie Curie's interest to be associated with the Supplier;
- d) is unable to pay its debts or makes a resolution for its winding up, makes an arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors or an administration or winding-up order is made or an administrator or receiver is appointed in relation to it, or it is or becomes bankrupt or convicted of a criminal offence;
- e) ceases to perform the Contract or to hold any licence, consent, registration or authorisation that is necessary or appropriate for it to hold for the purposes of this Contract; or
- f) if there is a change of control of the Supplier, as defined by statute in respect of companies.

### 14. DISPUTE RESOLUTION

If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**), then before bringing any legal proceedings or commencing any other alternative dispute resolution procedure in connection with the Dispute the parties shall follow the procedure set out in this clause:

- a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, each party's representative shall attempt in good faith to resolve the Dispute;
- b) if the representatives are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to a senior manager of each party who shall

attempt in good faith to resolve it; and

- c) if the senior managers are for any reason unable to resolve the Dispute within 14 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with CEDR (or equivalent) mediation procedure whereupon one of the parties shall supply written notice to the other of its desire to enter into mediation.
- d) No party may commence any court proceedings in relation to the whole or part of the Dispute until 30 days after service of the mediation notice, provided that the right to issue proceedings is not prejudiced by a delay.

### 15. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason the accrued rights and remedies of the parties as at termination shall not be affected and clauses which expressly or by implication have effect after termination (including but not limited to clauses 9 (Indemnity and Insurance) and 10 (Confidentiality) shall continue in full force and effect. On termination the Supplier shall immediately return to Marie Curie all documents, records, materials and any other information and property belonging to Marie Curie.

### 16. GENERAL

**Force majeure:** Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under this Contract due to circumstances beyond its reasonable control. If such circumstances prevent the Supplier from supplying the Goods and/or Services for more than four weeks, either party shall have the right, without limiting its other rights or remedies, to terminate the Contract with immediate effect by giving notice to the other party.

**TUPE:** The parties agree that TUPE does not apply to this Contract.

**Assignment and subcontracting:** The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Contract, unless prior written consent has been given by Marie Curie.

**Notices:** Any notice or other communication required to be given to a party under or in connection with the 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. 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.

**Non Waiver:** No failure or delay by a party in exercising any right or remedy under this Contract or by law shall constitute a waiver of that or any other right or remedy.

**Severance:** If any provision (or part of any provision) of this Contract is held to be invalid, illegal or unenforceable, the remaining provision or part of the provision shall remain valid and not be affected.

**No partnership:** The relationship of the Supplier to Marie Curie is that of independent contractor and nothing in this Contract is intended to constitute a partnership or joint venture or render the Supplier an employee. No party shall have authority to act as agent for, or to bind, the other party in any way.

**Third parties:** Save for Marie Curie's group companies, a person who is not a party to the Contract shall not have any rights under or in connection with it.

**Variation:** Any variation, including any additional terms and conditions, to this Contract shall only be binding when agreed in writing and signed by a duly authorised officer of each party.

**Governing law and jurisdiction:** This Contract shall be governed by English law. The parties irrevocably submit to the exclusive jurisdiction of the courts of England.