



elliswhittam

Employment Law / HR / Health & Safety

Service Agreement Terms

Ellis Whittam Limited

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Introduction

This booklet sets out the Terms on which we will provide our Services to you.

It is an important document and should be read and understood by Clients because it will form part of the contract between us, together with the terms of the signed Service Agreement.

Our packaged Employment Law & HR Support and Health & Safety Support services include optional Legal Expenses Insurance (LEI).

A Policy Summary and details relating to those insurance services are set out in this booklet.

Policy Summary of Our Legal Expenses Insurance

Legal Expenses Insurance & Ellis Whittam

We offer LEI as an option to clients that subscribe to our Employment Law & HR Support service. Subject to policy terms, legal expenses insurance covers the costs, settlements and awards incurred in pursuing or defending claims that arise from employment disputes.

We also offer LEI as an option to clients that subscribe to our Health & Safety Support service. Subject to policy terms, that insurance covers the costs of defending a health & safety prosecution.

This document provides a summary of the policy cover contained within the LEI. It does not include the full terms and conditions of the contract which can be found in the policy document [Legal Expenses Policy Document](#).

Who Regulates Ellis Whittam?

We are authorised and regulated by the Financial Conduct Authority. Our Registration Number is 310779. You can check these details on the FCA's Register by visiting the FCA's website <https://register.fca.org.uk/> or by contacting the FCA on 0800 111 6768.

Why Is Ellis Whittam Regulated By The FCA?

If an organisation offers insurance (or indemnity or guarantee), then it is a legal requirement that it is regulated by the FCA.

What Does The FCA Authorise Ellis Whittam To Do?

We are permitted to arrange, advise on, deal as agents of insurers and clients and assist in claims handling with respect to non-investment insurance policies with a single insurer for legal expenses.

Who Is The Insurer?

The insurance is underwritten and administered by ARAG plc.

Arag plc is a coverholder of the insurer ARAG Allgemeine Versicherungs- AG Branch United Kingdom. ARAG Allgemeine Versicherungs- AG Branch United Kingdom is authorized and regulated by BAFin (firm reference number VU5455) and by the Prudential Regulation Authority and is also regulated by the FCA (firm reference number 722744).

This can be checked on the Financial Services Register at: <https://register.fca.org.uk/>

What Are The Insurance Policy & Terms?

LEI is provided subject to the terms and conditions of the insurance policy. Please read the LEI policy terms (Legal Expenses Policy Document) [here](#). The policy terms form part of our contract with you as well as the contract between you and the insurer.

How Much Does The Insurance Cost?

We charge a fixed fee per employee per insurance year. For current rates please ask your contact at Ellis Whittam or refer to your detailed proposal document.

LEI is charged for each insurance year annually in advance. When you first join us we will send you an invoice for Legal Expenses Insurance to cover you for 12 months from date of joining. Please note that if you fail to pay the insurance premium within the 14 day payment terms, the insurer may be entitled to cancel the Legal Expenses Insurance to which the unpaid premium relates

Our Remuneration

Prior to the conclusion of each insurance contract, or upon renewal, we will remind you of your right to be advised of the level of commission which we receive from underwriters. You are entitled, at any time, to request information regarding any commission which we may have received as a result of placing your insurance business.

What Are The Insurance Limits?

Our standard individual claim limit is £150,000* in total for any one claim. For employment dispute insurance that is for representation costs, settlements and awards added together. For health & safety prosecutions cover is for defence legal costs.

There are inner limits to the health and safety insurance that provide additional cover for fees for intervention and initial representation. Cover for Fees for Intervention (FFI) is limited to £5,000 and cover for Initial Representation is limited to £2,500.

In the event of a claim under Insured event 4a legal costs & expenses in excess of £5,000 are not covered.

There is an aggregate limit (for all claims) of £1,000,000 in total in the policy year for Insured Event 2 Employment compensation awards.

For Insured Event 6 Legal defence the territorial limits that apply to the insurance cover are the United Kingdom of Great Britain and Northern Ireland, the Isle of Man and the Channel Islands, Norway, Switzerland and countries in the European Union. For all other Insured events the territorial limits that apply to the insurance cover are the United Kingdom of Great Britain and Northern Ireland, the Isle of Man and the Channel Islands.

Is The Insurance Suitable For You?

Please note that we are not providing you with a personal recommendation as to whether the insurance services provided are suitable for your specific needs. Our insurance meets the demands and needs of most organisations that wish to ensure that they have protection against the cost of defending Employment Tribunal claims and Health & Safety prosecutions. As such we believe that this insurance cover is suitable for an organisation of your size, situation and circumstances. However please note that the £150,000 cap on each claim, whilst considered suitable for the majority of employment claims, might not be suitable in the case of a discrimination claim (and limited other cases) where there is no cap on the compensation that an Employment Tribunal can award. In addition, if there are multiple claims in a year then the total cap of £1,000,000 could be exceeded. Similarly, the limits set for defence costs incurred in defending health & safety prosecutions might be exceeded in the event of a major incident and/or multiple incidents in one year.

If you wish to increase your insurance cover / limit of indemnity you may be able to do so. In most cases, we can arrange this in return for a higher fee/premium.

*If you wish to obtain a quote for increased cover in this way please put that request in writing (by email or by post) to Insurance Services at Ellis Whittam: Email: cmt@elliswhittam.com.

Your Duty Of Disclosure

Insurance is based upon information provided to the insurance company and Ellis Whittam - and you must therefore ensure that all such information is complete and accurate and that any facts that may influence the Insurer's decision are disclosed.

For instance you must notify Ellis Whittam as soon as possible in any of the following circumstances, providing full details in order that your premium and terms can be reassessed:

- If there is any cause, event or circumstance which may give rise to a claim being made under this insurance which has not already been notified to Ellis Whittam
- If an insurer has ever refused Legal Expenses Insurance, cancelled mid-term, imposed special terms or declined to renew a commercial legal expenses insurance policy
- If you have incurred more than £50,000 of legal costs in the previous 12 months
- If your declared number of employees (an employee is any person under a contract of service with you) exceeds 1,500

If you do not notify any changes to this Declaration it might affect any claim you make.

Cover

Subject to limits and the terms of the policy and the cover purchased, the Insurance applies in respect only of claims made during the period of insurance and covers legal expenses and awards of compensation arising from employment disputes and/or legal expenses arising from appeals against health and safety prohibition and improvement notices and/or defence to criminal prosecution and/or certain proceedings involving HMRC relating to taxation and/or certain data protection proceedings and/or claims for compensation for bodily injury suffered by an individual named client.

What Is Excluded from Cover?

The insurance will not provide cover unless you notify us immediately you become aware of an event or circumstance that may give rise to a claim.

In all employment dispute cases, you must obtain our advice as to the procedure to be adopted and follow and act on that advice with due diligence and, in particular, you must obtain our specific authorisation before, amongst other things, dismissing an employee, initiating redundancies or altering contract terms.

If you do not seek and/or follow our advice in respect of an employment issue/problem/dispute then your defence to a claim is unlikely to have reasonable (ie greater than 50%) prospects of success. If a claim does not have reasonable prospects of being successfully defended the claim is excluded from insurance cover.

You must make full, frank and honest disclosure of all relevant and material facts to Ellis Whittam when seeking advice from us and in the process of defending any claims. There may be other matters which will invalidate the insurance policy if you fail to tell us about them. If you fail to make full, frank and honest disclosure (and if you withhold material information from us) then Insurance will not apply.

For full details of claims excluded from cover please see the terms of the policy. We draw your attention, in particular to, the fact that the Insurance does NOT cover claims connected with or arising from events that occurred before the policy commenced or that existed

at that time and which in either case you knew or ought reasonably to have known might give rise to a claim by or against you. For example, the Insurance does not cover claims arising from dismissals or changes of contract terms before the policy commenced nor claims arising from previous accidents or existing prosecutions or disputes with employees or dismissals decided upon or planned before the policy commenced.

Awards and compensation which are covered by the Insurance in respect of an employment dispute exclude, in particular, arrears of pay, redundancy payments, money due or properly payable and arising from obligations under a contract of employment and awards under the equal pay legislation.

Also excluded are fines, exemplary and punitive damages or other penalties imposed by a court or tribunal whether in respect of employment disputes or health & safety or otherwise.

Claims Made

The Insurance works on a "Claims Made" basis. The definition of making a claim is Ellis Whittam being advised of the receipt of an Employment Tribunal Claim Form (ET1), enforcement notice or notice of prosecution. So long as this occurs prior to the expiry of the policy, cover continues for that claim. The policy therefore excludes any issues that are being dealt with but have not yet resulted in an ET1, enforcement notice or notice of prosecution before the expiry of the period of insurance.

What If You Have A Complaint?

We aim to provide a very high level of service at all times. However if you have reason to make a complaint about our service you should make a complaint in accordance with our complaints procedure which you can get a copy of by emailing cmt@elliswhittam.com or calling our Client Services Manager on 0345 226 8393

You may be entitled to refer the matter subsequently to the Financial Ombudsman Service. You can contact the Financial Ombudsman Service by telephone on 0800 0234567 and further information is available at <https://www.financial-ombudsman.org.uk> If you do decide to refer the matter to the Financial Ombudsman Service your legal rights will not be affected.

Compensation Arrangements

We are covered by the Financial Services Compensation Scheme. You may be entitled to compensation from the scheme if we cannot meet our obligations. This depends on the type of organisation and the circumstances of the claim. Insurance advising and arranging is covered for 90% of the whole claim, without upper limit. For compulsory classes of insurance, insurance advising and arranging is covered for 100% of the claim, without any upper limit. Further information about Compensation Scheme arrangements is available from the FSCS on 0800 678 1100 or by visiting <http://www.fscs.org.uk/> ARAG plc is also covered by the Financial Services Compensation Scheme.

Cancelling Your Insurance

If having examined your policy you decide not to proceed, you will have 14 days to cancel it starting on the day you receive the policy documentation.

You will also have 14 days to cancel the policy after every renewal date.

If you wish to cancel the insurance element of your service agreement with Ellis Whittam, you may not receive a pro rata refund of premium. We may also keep an amount that reflects the administrative costs of arranging and cancelling the policy.

Block Transfers

In respect of some classes of insurance we may operate block insurance arrangements in order to provide competitive terms. On occasions it will be necessary for us to transfer such blocks from one insurer to another where this is beneficial for our clients. By working with us you accept that we may do this.

Protecting Your Money

Prior to your premium being forwarded to the insurer, and for your protection, we either hold your money as an agent of the insurer (in which case your policy is treated as being paid for) or we hold it in a client bank account on trust for you. We reserve the right to retain interest earned on this account.

Underwriting Criteria

The key underwriting criteria is the number of employees and this figure must include part-timers and home workers etc.

Summary of LEI

A summary of our LEI Policy can be found by visiting this link: [Business Legal Policy Wording - November 2020.pdf](#)

Service Agreement Terms

Ellis Whittam Limited ("we", "us", "Company") provide our Services to you ("Client") subject to these conditions ("Terms"), which form part of your Contract with us.

1.1 Definitions and Interpretation

In these Terms the following expressions have the following meanings:

"Additional Services": any services we provide to you as specified in an Additional Services schedule issued by us to you and/or in the Service Agreement.

"Associated Business": any associated business identified in the Service Agreement.

"Claim": a claim made in respect of which legal expenses insurance is claimed by you and accepted by the Insurer as per these Terms.

"Contract": the contract between you and us for the supply of the Services comprising these Terms and the Service Agreement.

"Data": means any data or information, in whatever form, including images, still and moving, and sound recordings, including (but not limited to) any Personal Data.

"Data Controller, Data Processor, Data Subject, Personal Data [and Appropriate Technical and Organisational Measures]" all have the meanings given in the Data Protection Legislation.

"Data Protection Legislation" means GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK.

"Data Processing Policy": means the Company's data protection and privacy policy <https://elliswhittam.com/data-processing-policy/>.

"Employees": your employees excluding all directors and partners (including salaried partners) unless indicated in the Service Agreement.

"Fees": the fees for Services stated in the Service Agreement or such other fees, such as the LEI Administration Fee, as may be agreed between you and us from time to time

"GDPR" means EU General Data Protection Regulation ((EU) 2016/679).

"Insurance": the insurance policy which we arrange or seek to arrange for you.

"Insurer": the insurer which either (a) is approached for Insurance for you; or (b) provides Insurance to you.

"IPR": all patents, rights to inventions, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database right, moral 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 of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"LEI Administration Fee": the fee charged by Ellis Whittam Limited for the annual administration and management of the Insurance. This fee does not form any part of the Insurance policy.

"Service Agreement": the Service Agreement form (including these Terms and any documents referred to herein) and the final proposal letter from us in which we set out details of the Services.

"Service Period": the fixed period stated in the Service Agreement and any extension of that period in accordance with these Terms or otherwise agreed with you. If we are supplying any services to you during any Transitional Period, the fixed period will not commence until expiry of that Transitional Period.

"Services": the services which we supply to you from time to time including (but not limited to) those listed in the Service Agreement but excluding any Additional Services, which will be supplied on our separate Additional Services terms as notified to you.

"Start Date": the date upon which we agree to start providing Services to you.

"Subcontracted Services": any services (or any part thereof) which are provided by a third party supplier on our behalf ("Sub-contractors").

"Subcontractor's Software": any third party software owned or licensed by the Sub-contractors and used in the supply of the Subcontracted Services.

"Transitional Period": the period defined in the Service Agreement, commencing prior to and ending on the commencement of the Service Period during which we agree to supply, at our discretion, a limited level of Service.

1.2 Except where the context otherwise requires references to persons includes bodies corporate, unincorporated associations and partnerships and the masculine gender includes the feminine and neuter and references to the singular include the plural and vice versa.

2 Appointment

2.1 The Contract shall come into existence when we 2.1.1 execute the Service Agreement 2.1.2 issue written acceptance of your order (including by email); or 2.1.3 commence supply of the Services

2.2 If you request it, we will put a proposal for Insurance to the Insurer on your behalf. These Terms apply to all Services which we may perform or arrange for you after the Start Date.

2.3 The Services will commence on the Start Date and as regards those Services that are to be provided for a fixed period will continue for the Service Period (unless terminated or suspended in accordance with these Terms) and in relation to those Services that are one-off Services or are otherwise not agreed to be provided over a fixed period the Services will be provided in a reasonable time by us unless or until the Contract is terminated or we suspend the Services under these Terms.

2.4 We will carry out the Services with reasonable care and skill.

2.5 You shall provide us and/or our agents, employees or subcontractors with all information and instructions (within any timeframe requested) and such access to your premises, as may reasonably be required in connection with the supply of Services, Subcontracted Services or Additional Services.

2.6 In the event that the Insurer declines to insure you, we may elect either to terminate the Contract or to supply the Services without the benefit of Insurance and with no obligation to seek Insurance. You are not entitled to terminate if Insurance is declined, the Insurer refuses or withdraws cover.

3 Legal Expenses Insurance (LEI)

3.1 Any proposal for Insurance will be put forward using information provided by you. Insurance is subject to the terms of the policy of insurance [(a copy of which is available [here](#))]. We are not a party to the insurance contract and are not liable if the Insurer refuses or withdraws cover. We are not obliged to seek insurance from any Insurer other than the Insurer.

3.2 Your rights under any Insurance in relation to a Claim, health and safety dispute or criminal prosecution (to the extent that the same are covered by the Insurance) are subject to and conditional on these Terms and the terms and conditions set out in the Insurer's insurance policy.

3.3 Any sum we quote for Insurance is the fee quoted by the Insurer at the date of the Contract but may vary as specified by the Insurer from time to time. We will invoice you all sums due in respect of any Insurance on an annual basis (inclusive of Insurance Premium Tax) and you shall pay each invoice within 14 days of the date of invoice. In the event of late payment of our invoice in respect of the Insurance we shall be entitled to cancel the Insurance and/or your insurance cover may be invalidated.

3.4 Insurance is purchased annually on your behalf by us. You will be asked to complete an annual declaration form so that the Insurer can issue correct Insurance cover for you. It is important that significant changes (+/- 15%) to the number of staff you employ are notified promptly to us. If you are in any doubt about what constitutes a significant change you should ask us.

3.5 You will provide all information we require in order to put forward a proposal for Insurance or any renewal and will complete any declaration forms and provide all information required by the Insurer. If you are in any doubt of what information to include you should contact us.

3.6 You acknowledge that you may prejudice the policy cover if you use advisers other than us, incur costs, or discuss or make any offer(s) of settlement, without the Insurer's prior consent.

4 Sub-contractors

4.1 The following terms apply to Subcontracted Services:

4.1.1 We reserve the right to withdraw any Subcontracted Services: if such service is provided to you without charge; the Sub-contractor is unable or ceases to supply the Subcontracted Services; upon giving you not less than seven days written notice; or, immediately upon termination of the Contract. Any Subcontracted Services shall be suspended if any of the Services are suspended.

4.1.2 Where any Subcontracted Services are withdrawn we are not liable to you in respect of the failure to provide the relevant Subcontracted Services and: (a) any fees not already paid by you in respect of unperformed Subcontractor Services shall no longer be payable; (b) any fees paid by you in respect of unperformed Subcontractor Services will be refunded to you; and (c) there will be no refund of any fees paid for any Subcontracted Services that have been provided. Termination of the Subcontracted Services shall not affect the supply of the Services and the Contract shall remain in force in relation to such Services.

4.1.3 You agree that you will not make any unauthorised copies of any Sub-contractor Software and will only use it, and the Subcontracted Services, for your own legitimate purposes in the course of your business, in accordance with any training provided, for the intended purposes and in accordance with the Contract.

4.1.4 We will use our reasonable endeavours to procure the supply of any Subcontracted Services for the fixed period for which other Services are provided to you.

4.1.5 You will indemnify us against any losses, claims, costs, liabilities, damages or expenses incurred by or made against us by any Sub-contractor in connection with your breach of this clause 4.

4.1.6 We are not the provider of the Sub-contracted Services or any Sub-contractor Software and shall not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising from or in connection with: (a) any Sub-contracted Services; (b) any Sub-contractor Software; or (c) the insolvency of any Sub-contractor, for any: (i) loss of profit (ii) loss of business (iii) loss of agreements or contracts (iv) loss of anticipated savings (v) loss of use or corruption of software, data or information (vi) loss or damage to goodwill; and (vii) any indirect or consequential loss.

- 5 Fees**
- 5.1 In consideration of our supply of the Services, you shall pay us the Fee plus VAT in accordance with the payment terms set out in the Service Agreement. Where there is an agreed Transitional Period the Fee shall not become due until the end of that period. In relation to any Additional Services agreed to be provided after the date of the Service Agreement the fee agreed in respect of such Services shall be paid within 14 days from the date of our invoice.
- 5.2 We reserve the right to increase the Fee on an annual basis with effect from each anniversary of the Start Date by 2% - and the first such increase shall take effect on the first anniversary of the Start Date.
- 5.3 If you fail to make any payment due by the due date or fail to pay any other sum claimed by us (including, but not limited to, sums that have been paid to third parties on your behalf) and fail to remedy the same within 14 days of being required by us to do so then without limiting any other rights or remedies available to us, we shall also be entitled to:
- 5.3.1 charge you interest before and after judgment on any unpaid part of the sums due to or claimed by us whether under the Contract or otherwise at the rate of 2% per calendar month or part thereof until full payment is received by us; and/or
- 5.3.2 terminate the provision of the Services or any part thereof.
- 5.4 Time for payment of all sums due to us shall be of the essence.
- 5.5 All amounts due from you shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.6 We shall be entitled to set off against any sum due to or claimed by you any sum due to or claimed by us.
- 5.7 In the event that you cancel a confirmed appointment with your nominated Health & Safety Consultant on less than 3 working days' notice, we reserve the right to charge you a re-booking fee of £100 for re-scheduling the appointment. In the event that you cancel a booked visit on the day of the visit or fail to allow us to complete the visit in full, then the visit will be deemed to have been fulfilled.
- 5.8 Where the Services include our H&S services or products you agree that you will:
- 5.8.1 keep us informed at all times of any significant developments and occurrences within your organisation and its activities;
- 5.8.2 fully co-operate with us; and
- 5.8.3 keep appointments and allow us to attend your premises in a timely manner to carry out assessments. We shall make 2 attempts by telephone to book a H&S appointment, we will then make 2 further attempts by email – after such, we will make no further efforts to book the appointment and the onus then falls on you to contact us to arrange the booking, otherwise it will be deemed that we have fulfilled our contractual obligation in relation to that visit. Failure to cooperate with us to the extent that we cannot book in or complete a visit to your premises will result in our status as your competent person as required under Regulation 7 of The Management of Health and Safety at Work Regulations 1999 being withdrawn.
- 5.9 Fees are subject to the prevailing rate of VAT. LEI is subject to the prevailing rate of Insurance Premium Tax.
- 6 Termination**
- 6.1 Either party may terminate the Contract immediately at any time by giving written notice to the other party if the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so.
- 6.2 Without affecting any other right or remedy available to us, we shall be entitled to terminate the Contract with immediate effect by giving written notice to you without liability if:
- 6.2.1 you repeat or continue after written warning any other breach of the Contract;
- 6.2.2 you are unable to pay your debts as and when they fall due or go into liquidation or have a receiver or an administrator or an administrative receiver or a provisional liquidator appointed over all or any of your assets, are made bankrupt or enter into a voluntary arrangement or other scheme of arrangement or compromise with your creditors, suspend, or threaten to suspend, or cease or threaten to cease to carry on all or a part of your business, or your financial position deteriorates to such an extent that in our opinion your ability to fulfil your obligations under the Contract have been placed in jeopardy.
- 6.2.3 the Insurer declines to provide or renew the Insurance.
- 6.2.4 any representation or warranty by you proves to be untrue or inaccurate in any material respect.
- 6.3 Without limiting our other rights or remedies, we may suspend provision of the Services under the Contract or any other contract between you and us if you fail to pay any amount due under the Contract on the due date for payment, you become subject to any of the events listed in clause 6.2.2 or we reasonably believe that you are about to become subject to any of them.
- 7 Liability**
- 7.1 Subject to clause 7.5, our total liability to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the greater of:
- 7.2.1 the insurance cover effected by us and actually available to meet the claim, if any; or
- 7.2.2 the Fees paid for that part of the Services in respect of which the claim is made.
- 7.3 Nothing in the Contract shall limit or exclude our liability for death or personal injury caused by our negligence or for fraud or fraudulent misrepresentation.
- 7.4 Except as expressly set out in the Contract all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 7.5 This clause 7 shall survive termination of the Contract for any reason.
- 8 General**
- 8.1 You represent, warrant and undertake to us that all information supplied by you to us, the Insurer and/or any Sub-contractor is and will be true and accurate and that you have not relied on any representation or warranty which does not form part of the Contract.
- 8.2 We may at any time subcontract the provision of the Services.
- 8.3 Any notices to be given under the Contract will be in writing and will be delivered personally or by signed attachment to an email addressed to cmt@elliswhittam.com or sent by first class post to the address of the recipient set out in the Service Agreement or to any other address that the recipient may notify to the other party from time to time for the purpose of receiving notices and will be deemed duly served in the case of a notice delivered personally or by email at the time of delivery and in the case of a notice sent by post two business days after the date of dispatch.
- 8.4 We shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of our obligations under the Contract if such delay or failure results from events, circumstances or causes beyond our reasonable control.
- 8.5 The Contract and any dispute arising in relation to it shall be governed by and construed in accordance with English law and any dispute between the parties whether in relation to the Contract or otherwise shall be subject to the exclusive jurisdiction of the Courts of England and Wales.
- 8.6 We are entitled to assign the benefit of the Contract to any third party. You shall not assign your rights or liabilities under the contract to a third party without our prior consent.
- 8.7 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 8.8 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible the relevant provision or part-provision shall be deemed deleted and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 8.9 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 8.10 Any clause which is expressly stated to or which by implication is intended to survive termination of the Contract shall so survive.
- 9 Data Protection and Data Processing**
- 9.1 You acknowledge that for the purposes of the Data Protection Legislation:
- 9.1.1 You are the Data Controller; and
- 9.1.2 We are the Data Processor
- in respect of any Personal Data processed under or in connection with the Contract and the Services.
- 9.2 We may authorise third party processors and subcontractors (TPPs) to process Personal Data.
- 9.3 By entering into the Contract you consent to us processing Personal Data in accordance with the Data Processing Policy, in order that we may properly perform our obligations in respect of the Contract.
- 9.4 The Data Processing Policy includes details about (a) the Data we collect in order to perform our obligations in respect of the contract; (b) the use we will make of that Data; (c) who we may disclose the Data to; (d) where we will store your Data and, for how long; and (e) your rights in respect of Data.
- 10 Confidentiality**
- 10.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.2.
- 10.2 Each party may disclose the other party's confidential information: (a) to such of its employees, agents, subcontractors, accountants or lawyers who need to know such information for the purpose of carrying out the party's obligations under the Contract; and (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. Each party shall ensure that its employees, agents or subcontractors comply with this clause 10. This clause 10 shall survive termination of the Contract.
- 11 Intellectual Property Rights**
- 11.1 All IPR in or arising out of or in connection with the Additional Services shall be owned by us and you are only permitted to use any of our IPR as required for the discharge of your obligations under the Contract.
- 11.2 You acknowledge that, in respect of any third party IPR, your use of any such IPR is conditional on us obtaining a written licence from the relevant licensor on such terms as will entitle us to license such rights to you.