

## **Skills in Healthcare – Terms and conditions of supply**

Skills in Healthcare a trading name of Alliance Healthcare (Distribution) Limited, registered in England and Wales with company number 03446039 (“Skills”)

These terms and conditions apply to the supply of the Services by Skills where Skills and a Client contract under Skills’ Supply of Services (Short Term) Contract only. These terms and conditions do not apply in conjunction with any other agreement between Skills and a Client.

### **The Conditions**

These terms and conditions apply in conjunction with the Contract and prevail and supersede over the Client’s terms and conditions, whether printed on any invoice, order, quotation, specification or any other document provided by the Client.

### **A. Definitions**

In these Conditions, the following definitions apply:

**Client:** means the client for whom Skills provides the Services.

**Commencement Date:** has the meaning set out in the Contract.

**Conditions:** these terms and conditions as amended from time to time in accordance with the **General** provisions, Clause K.

**Contract:** the Supply of Services (Short-Term) Contract made in writing between Skills and the Client containing details of the supply of Services in accordance with these Conditions.

**Deliverables:** the deliverables produced by Skills for the Client, as set out in the Contract.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Parties:** together, Skills and the Client.

**Services:** the services, including the Deliverables, supplied by Skills to the Client, as set out in the Contract.

**Services Fee:** the services fee payable by the Client for the supply of the Services in accordance with the terms of the Contract.

**Terms:** together the Conditions and the Contract.

## **B. The Conditions**

1. The Terms apply to all orders for Services placed by the Client to the exclusion of all other terms and conditions (including any of the Client's terms and conditions under any purchase order, confirmation of order or any other document or which are implied by trade, custom, practice or course of dealing) and supersede any previous terms and in the event of any inconsistency with any other terms that might apply, the Terms shall prevail.
2. These Conditions replace any other earlier conditions and may be changed by Skills in writing at any time, including by putting amended conditions on the Skills in Healthcare website.
3. The Terms constitute the entire agreement between the Parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Skills which is not set out in the Terms.
4. Any samples, drawings, descriptive matter or advertising issued by Skills, and any descriptions or illustrations contained in its catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Terms or have any contractual force.

## **C. Supply Of Services**

1. Skills shall supply the Services to the Client in accordance with the Terms in all material respects.
2. Skills shall use all reasonable endeavours to meet any performance dates specified in the Terms, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
3. Skills shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and it shall notify the Client in any such event.
4. Skills shall provide the Services using reasonable care and skill.

## **D. Client's Obligations**

1. The Client shall:
  - (a) ensure that the terms of the Contract are complete and accurate;
  - (b) co-operate with Skills in all matters relating to the Services;
  - (c) provide Skills, its employees, agents, consultants and subcontractors, with access to its premises, office accommodation and other facilities to the extent as may be reasonably required by Skills in order to provide the Services;
  - (d) provide Skills with such information and materials as it may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
  - (e) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
  - (f) keep and maintain all materials, equipment, documents and other property of Skills (**Skills Materials**) at its premises in safe custody at its own risk, maintain the Skills Materials in good condition until returned, and not dispose of or use the Skills Materials other than in accordance with Skills' written instructions or authorisation.

## **E. Price**

1. In consideration of the provision of the Services by Skills, the Client shall pay the Services Fee as set out in the Contract.
2. The Services Fee does not include any value added tax (VAT), government tax or duty which will be charged and payable in addition to the Services Fee at the time when payment for the Services is due.

## **F. Payment**

1. Skills will issue an invoice for the Services Fee, any other amounts due to it, and any other applicable VAT, tax or duty in accordance with the terms of the Contract.
2. Subject to the following, the Client must pay the Services Fee (without any deduction) and any other amount due to Skills, so that cleared funds are received by Skills into its bank account on or before 30 days from the date of the invoice to the bank account nominated by Skills in writing from time to time. Skills shall be entitled at any time to require the Client to pay for any service before it performs it for the Client.
3. Any variation to these terms of payment must be in writing signed by both Parties, or their representatives.
4. If the Client fails to make a payment by the due date, without affecting any of its other rights and remedies Skills may:
  - a. suspend any further Services;
  - b. use or set off any payments the Client has made against any sums due as Skills may decide;
  - c. charge interest on the amount not paid at an annual rate of 2% above National Westminster Bank's base rate until payment is received in full. For the purposes of working out interest part of a month shall be treated as a full month.
5. The Client is not entitled to withhold payment or use any amounts as a set off against any amount Skills may owe the Client.
6. Skills may, without limiting any other rights or remedies it may have, set off any amounts owed to Skills by the Client under the Terms against any amounts payable by Skills to the Client.

## **G. Intellectual Property Rights**

1. All Intellectual Property Rights in or arising out of the Services shall be owned by Skills.
2. Skills grants the Client a non-exclusive licence to use the Deliverables and any Intellectual Property Rights arising from the provision of the Services to the extent required to enjoy the benefit of the Services and the Deliverables.
3. All materials supplied by Skills in the performance of the Services remain its exclusive property.

## **H. Liability**

1. To the fullest extent possible any conditions, warranties, representations and other terms expressed or implied by any law or Act of Parliament are excluded, unless expressly stated in the Conditions.
2. Nothing in these Conditions shall limit or exclude either Party's liability for:

- (a) death or personal injury caused by negligence, or the negligence of employees, agents or subcontractors; or
- (b) fraud or fraudulent misrepresentation.
- 3. Subject to 2 above, Skills will not be liable for any pure economic loss, consequential loss, loss of profit, loss of business, depletion or loss of good will (in each case whether indirect or direct) suffered from the supply of the Services or otherwise arising under or in connection with the Terms.
- 4. Skills' total liability in respect of all other losses arising under or in connection with the Terms, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed an amount equal to the Services Fee unless Skills say otherwise in these Conditions.
- 5. Skills will not be liable as a result of any delay or failure to perform its obligations under the Contract, for any circumstances beyond its control, including but not limited to trade disputes, war, fire or natural disasters.
- 6. If circumstances beyond its control prevent either Party from providing any of the Services that Party shall a. inform the other Party as soon as reasonably practicable of the relevant circumstances and b. use reasonable endeavours to mitigate the effects and resume its performance of its obligations under the Terms, and without limiting any other rights or remedies, if the relevant circumstances continue for more than 6 weeks it shall have the right to terminate the Contract immediately by giving written notice.
- 7. The Client indemnifies Skills on demand in respect of any Losses ("Loss" being a loss, cost, damage, fine, charge, expense, claim or other liability (including legal and other professional fees)) incurred by Skills arising out of or in connection with any claim that a product or document, information or materials specified and provided by the Client to Skills relating to the Services infringes any third party Intellectual Property Rights.
- 8. The Client indemnifies Skills on demand in respect of any Losses incurred by Skills arising out of or in connection with any damaged, faulty or defective product that is the subject of the Services (save as caused by Skill's act or omission).
- 9. These liability provisions shall survive termination of the Contract.

#### **I. Duration and Termination**

- 1. Skills will provide the Services in accordance with the terms of the Contract.
- 2. Subject to the following paragraphs, the agreement between Skills and the Client will terminate in accordance with the terms of the Contract.
- 3. Without prejudice to any other rights and remedies which either Party may have under these Conditions, either Party may terminate the agreement without liability to the other immediately on giving written notice to the other if:
  - a. The other Party fails to pay any amount due under these Terms on the due date for payment and remains in default not less than ten working days after being notified in writing to make such payment; or
  - b. The other Party commits a material breach of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that Party being notified in writing of the breach; or

- c. The other Party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - d. The other Party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other Party; or
  - e. A petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies, or the solvent reconstruction of that other Party; or
  - f. An application is made to the court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other Party; or
  - g. A floating charge holder over the assets of that other Party has become entitled to appoint, or has appointed, an administrative receiver; or
  - h. A person becomes entitled to appoint a receiver over the assets of the other party, or a receiver is appointed over the assets of the other party; or
  - i. A creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
  - j. Any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause (a) to clause (i) (inclusive) above; or
  - k. The other Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
4. Without limiting any other rights or remedies, Skills may suspend provision of the Services under the Contract if the Client become subject to any of the events listed in 3b. to 3k. above, or Skills reasonably believes that the Client is about to become subject to any of them, or if it fails to pay any amount due under this Contract on the due date for payment.
  5. On termination of these Conditions for any reason:
    - a. The Client shall immediately pay any outstanding invoices and interest (if any) and, in respect of Services supplied but for which no invoice has been submitted, Skills may submit an invoice which shall be payable immediately;
    - b. Both Parties shall return or destroy all the confidential information of the other Party that is in its possession or control;
    - c. Any accrued rights, remedies, obligations and liabilities as at termination shall not be affected, including the right to claim damages in respect of any breach of the Terms which exist at or before the date of termination; and
    - d. Clauses which expressly or by implication have effect after termination shall continue in full force and effect, including but without limitation: confidentiality, limitation of liability, notices, governing law and jurisdiction.

## J. Data Protection

1. For the purposes of this Clause J, Data Protection Legislation includes all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR), the Data Protection Act 2018 (and regulations made thereunder) or any successor legislation, and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications). The following terms shall have the meanings given to them in the UK GDPR: Controller, Processor, Data Subject, Personal Data, Personal Data Breach, and Processing.
2. To the extent that a party to the Contract processes Personal Data on behalf of the other pursuant to the Conditions or the Contract ("**Processor**"), it shall:
  - (a) use the Personal Data only in connection with its obligations under the Contract and for no other purpose;
  - (b) keep the Personal Data confidential and provide appropriate technical and organisational measures against unauthorised or unlawful Processing, accidental loss or destruction of or damage to the Personal Data;
  - (c) not process Personal Data outside of the United Kingdom without the prior written consent of the Controller;
  - (d) take all reasonable steps to ensure the reliability of any of the personnel who have access to Personal Data;
  - (e) at all times perform its obligations under the Contract in such a manner as not to cause the Controller in any way to be in breach of its obligations under applicable Data Protection Legislation;
  - (f) provide such information as is reasonably necessary to enable the Controller to satisfy itself of the Processor's compliance with this Clause J and allow the Controller, its employees or authorised agents or advisers upon reasonable prior written notice to the Processor, reasonable access to any relevant premises, during normal business hours, to inspect the procedures and measures referred to in this Clause J; and
  - (g) promptly inform the Controller of any request for disclosure of Personal Data from a Data Subject or any other third party which it receives directly and provide a copy of such request without disclosing or releasing any Personal Data to such third party without first consulting with and obtaining the consent of the Controller and provide reasonable assistance to the Controller in complying with any subject access request and/or responding to any enquiry made, or investigation or assessment of Processing initiated by the Information Commissioner in respect of the Personal Data as soon as is possible but in any event within five (5) Business Days of receipt of the request or any other period as agreed in writing with the Controller from time to time.
3. In the event that the Processor becomes aware that it is Processing, or has Processed, Personal Data in contravention of this Clause J, the Processor shall promptly, and in writing, notify the Controller with full details of the contravention.

4. The Processor shall, on termination or expiry of the Contract or any part of it, and at any time on the request of the Controller either return or destroy the Personal Data (including all copies of it) immediately.

#### **K. General**

1. Skills may transfer to any other person all or any of its rights or the benefit of those rights created by the Terms and may subcontract or delegate in any manner any or all of its obligations under the Terms to any third party or agent provided that it remains liable for the acts and omissions of that person or entity.
2. The Client may not transfer its rights, or the benefit of those rights, created by the Terms without Skills written consent.
3. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, nor constitute either Party as the agent of the other for any purpose. Neither Party shall have authority to act as agent for, or to bind, the other Party in any way.
4. Any notice given under these Conditions must be in writing and addressed to:
  - a. the Client at its registered office or principle place of business or any other address it has notified Skills in writing; or
  - b. Skills at the registered office set out below,and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service or commercial courier.
5. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in 4a. or b. above; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
6. The notice provisions set out at 4 and 5 above shall not apply to the service of any proceedings or other documents in any legal action.
7. No waiver or retraction of a waiver by Skills under these Conditions, will be valid or binding unless it is signed and in writing. Any failure by Skills to exercise any right under these conditions, or to require the Client's performance of any provision under these Conditions, or waiver of any breach of these conditions will not prevent a subsequent exercise or enforcement of such provisions or be deemed a waiver of any subsequent breach of the same or any other provision of these conditions.
8. If at any time:
  - a. Any of these conditions should be wholly or partly illegal, invalid or unenforceable, then such illegality, invalidity or enforceability will not affect the other remaining conditions in any way;
  - b. Any of these conditions should be wholly invalid or unenforceable but would be valid or enforceable if some part of the condition were deleted, then the condition in question shall apply with such modification as may be necessary to make it valid and enforceable.
9. The Parties shall keep confidential all information disclosed in relation to the agreement between the Parties, in whatever form disclosed or of which it becomes aware out of or in connection with the performance of the Services ("Confidential Information") and shall use

the Confidential Information only as necessary for the performance of obligations under the Terms, or as required by law.

10. Except as set out in these Conditions, no variation of the Terms, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Skills.
11. No term of these Conditions shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.
12. Skills is committed to eliminating all risk of bribery, corruption, slavery and human trafficking in its business and supply chains and complies with the AmerisourceBergen's code of ethics and business conduct. Skills expects all its customers/clients and partners to uphold the spirit of this code and not to do any act or thing for the benefit of, in the name of or on behalf of Skills that could cause it to be in breach of this code or could be construed as an offence under any applicable anti-corruption legislation, including with limitation the UK Bribery Act 2010 and any applicable anti-slavery or anti-human trafficking legislation, including without limitation the UK Modern Slavery Act 2015.
13. If any dispute arises in connection with the Terms, the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the Parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing to the other Party to the dispute requesting a mediation. A copy of the request should be sent to CEDR. The commencement of a mediation will not prevent the Parties commencing or continuing court proceedings
14. These conditions are governed by English law. The courts of England shall have exclusive jurisdiction.

Skills in Healthcare is a trading name of Alliance Healthcare (Distribution) Limited (Registered no. 3446039) and has its registered office at 43 Cox Lane, Chessington, Surrey KT9 1SN.

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