

1. **Interpretation**

Definitions. In these Conditions, the following definitions apply:

"Bannatyne" means the entity indicated on the Order, being either:

Bannatyne Fitness Limited, a company incorporated and registered in England and Wales under company number 03287770 and whose registered office is at Power House, Haughton Road, Darlington, Co Durham, DL1 1ST; or

Bannatyne Hotels Limited, a company incorporated and registered in England and Wales under company number 03271621 and whose registered office is at Power House, Haughton Road, Darlington, Co Durham, DL1 1ST;

"Bannatyne Materials" has the meaning set out in clause 5.3.9;

"Business Day" a day other than a Saturday, Sunday or public holiday in England when clearing banks in London are generally open for business;

"Commencement Date" has the meaning set out in clause 2.2;

"Conditions" these terms and conditions as amended from time to time in accordance with clause 17.8;

"Contract" the contract between Bannatyne and the Supplier for the supply of Goods and/or Services in accordance with these Conditions;

"Data Protection Legislation" means the General Data Protection Regulation (EU) (2016/679) ("GDPR") and any applicable UK legislation that modifies, implements or applies it. (*controller, data subject, Personal Data* and *processor* has the meaning set out in the Data Protection Legislation).

"Deliverables" all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

"European DP Law" as applicable, (a) the GDPR and any data protection legislation applicable (including UK DP Law) and (b) the ePrivacy Regulation (The Privacy and Electronic Communications (EC Directive) Regulations 2003 (2003 No. 2426)) and any other applicable privacy legislation; whether or not there is a Brexit event, and includes any superseding legislation.

"Goods" the goods (or any part of them) set out in the Order;

"Goods Specification" any specification for the Goods, including any related plans and drawings, that is agreed in writing by Bannatyne and the Supplier;

"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;

"Order" Bannatyne's order for the supply of Goods and/or Services, as set out in Bannatyne's purchase order form, or in Bannatyne's written acceptance of the Supplier's quotation, or as included with these Conditions, as the case may be;

"Services" the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification;

"Service Specification" the description or specification for Services agreed in writing by Bannatyne and the Supplier;

"Special Conditions" means those additional or different terms and conditions of performance specified in the Order as "Special Conditions"; and

"Supplier" the person or firm from whom Bannatyne purchases the Goods and/or Services.

"UK DP Law" means any UK Data Protection Act passed during 2018 and regulations/other subordinate legislation (a) made under that Act or (b) made under section 2(2) of the European Communities Act 1972 which relate to the GDPR.

1.1. In these Conditions, the following rules apply :

1.1.1. a "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.1.2. a reference to a party includes its successors or permitted assigns;

1.1.3. a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.1.4. any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.1.5. a reference to "writing" or "written" includes e-mails.

2. **Basis of contract**

2.1. The Order constitutes an offer by Bannatyne to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

2.2. The Order shall be deemed to be accepted on the earlier of:

2.2.1. the Supplier issuing written acceptance of the Order; or

2.2.2. any act by the Supplier consistent with fulfilling the Order,

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

- 2.3. These Conditions, together with any applicable Special Conditions, apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4. In the event of any inconsistency or conflict between the terms of these Conditions and the Special Conditions, the Special Conditions shall prevail over these Conditions.
- 2.5. All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

3. Supply of Goods

- 3.1. The Supplier shall ensure that the Goods shall:
 - 3.1.1. correspond with their description and any applicable Goods Specification;
 - 3.1.2. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by Bannatyne, expressly or by implication, and in this respect Bannatyne relies on the Supplier's skill and judgment;
 - 3.1.3. where applicable, be free from defects in design, materials and workmanship and remain so for twelve (12) months after delivery;
 - 3.1.4. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and
 - 3.1.5. have a reasonable shelf life at the point of delivery, where the Goods are perishable.
- 3.2. The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
- 3.3. Bannatyne shall have the right to inspect and test the Goods at any time before delivery.
- 3.4. If following such inspection or testing Bannatyne considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, Bannatyne shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and Bannatyne shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. Delivery of Goods

- 4.1. The Supplier shall ensure that:
 - 4.1.1. the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - 4.1.2. each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - 4.1.3. if the Supplier requires Bannatyne to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier; and
 - 4.1.4. the Goods are delivered in a manner which causes the least disruption and/or obstruction to Bannatyne, its staff and customers as is reasonably possible in the circumstances.
- 4.2. The Supplier shall deliver the Goods:
 - 4.2.1. on the date specified in the Order or, if no such date is specified, then within five (5) Business Days of the date of the Order;
 - 4.2.2. to Bannatyne's premises as is set out in the Order or as instructed by Bannatyne before delivery (the "**Delivery Location**");
 - 4.2.3. during Bannatyne's normal hours of business, or as instructed by Bannatyne.
- 4.3. Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4. If the Supplier:
 - 4.4.1. delivers less than ninety-five per cent (95%) of the quantity of Goods ordered, Bannatyne may reject the Goods; or
 - 4.4.2. delivers more than one hundred and five per cent (105%) of the quantity of Goods ordered, Bannatyne may at its sole discretion reject the Goods or the excess Goods, and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and Bannatyne accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.
- 4.5. The Supplier shall not deliver the Goods in instalments without Bannatyne's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Bannatyne to the remedies set out in clause 6.1.
- 4.6. Title and risk in the Goods shall pass to Bannatyne on completion of delivery (or where the Supplier is also providing installation and/or commissioning services in respect of the relevant Goods, on the completion of such installation and/or commissioning services by the Supplier).

5. Supply of Services

- 5.1. The Supplier shall from the Commencement Date and for the duration of this Contract provide the Services to Bannatyne in accordance with the terms of the Contract.
- 5.2. The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by Bannatyne.
- 5.3. In providing the Services, the Supplier shall:
- 5.3.1. co-operate with Bannatyne in all matters relating to the Services, and comply with all instructions of Bannatyne;
 - 5.3.2. perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - 5.3.3. use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
 - 5.3.4. ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by Bannatyne;
 - 5.3.5. provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - 5.3.6. use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Bannatyne, will be free from defects in workmanship, installation and design;
 - 5.3.7. obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations (including complying with the Modern Slavery Act 2015);
 - 5.3.8. observe all health and safety rules and regulations and any other security requirements that apply at any of Bannatyne's premises;
 - 5.3.9. hold all materials, equipment and tools, drawings, specifications and data supplied by Bannatyne to the Supplier (the "Bannatyne Materials") in safe custody at its own risk, maintain Bannatyne Materials in good condition until returned to Bannatyne, and not dispose or use Bannatyne Materials other than in accordance with Bannatyne's written instructions or authorisation;
 - 5.3.10. not do or omit to do anything which may cause Bannatyne to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Bannatyne may rely or act on the Services;
 - 5.3.11. leave any Bannatyne premises at which the Services are performed in a clean and tidy state, remove any waste materials, packaging or debris from the site and not attempt to store any equipment, materials or spares at the site after the Supplier's staff have left; and
 - 5.3.12. shall be courteous and polite to all Bannatyne staff and customers, completing the Services with the minimum of disruption at the relevant site and in a professional manner.

6. Bannatyne remedies

- 6.1. If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, Bannatyne shall, without limiting its other rights or remedies, have one or more of the following rights:
- 6.1.1. to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 6.1.2. to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
 - 6.1.3. to recover from the Supplier any costs incurred by Bannatyne in obtaining substitute goods and/or services from a third party;
 - 6.1.4. where Bannatyne has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
 - 6.1.5. to claim damages for any additional costs, loss or expenses incurred by Bannatyne which are in any way attributable to the Supplier's failure to meet such dates.
- 6.2. If the Goods are not delivered by the applicable date, Bannatyne may, at its option, claim or deduct five per cent (5%) of the price of the Goods for each day's delay in delivery by way of price reduction, to reflect the added inconvenience and loss of utility to Bannatyne. The parties agree that the reduction in the Charges set out in this clause 6.2 is reasonable and proportionate. The remedy under this clause 6.2 shall be without prejudice to Bannatyne's other rights or remedies.
- 6.3. If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies, Bannatyne shall have one or more of the following rights, whether or not it has accepted the Goods:
- 6.3.1. to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
 - 6.3.2. to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 6.3.3. to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - 6.3.4. to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 6.3.5. to recover from the Supplier any expenditure incurred by Bannatyne in obtaining substitute goods from a third party; and
 - 6.3.6. to claim damages for any additional costs, loss or expenses incurred by Bannatyne arising from the Supplier's failure to supply Goods in accordance with clause 3.1.
- 6.4. These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

- 6.5. Bannatyne's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

7. Bannatyne's obligations

- 7.1. Bannatyne shall:
- 7.1.1. provide the Supplier with reasonable access at reasonable times to Bannatyne's premises for the purpose of providing the Services, provided that the times and dates of performance have as far as reasonably possible been agreed with the duty manager of the relevant Bannatyne premises in advance; and
- 7.1.2. provide such information as the Supplier may reasonably request for the provision of the Services and Bannatyne considers reasonably necessary for the purpose of providing the Services.

8. Charges and payment

- 8.1. The price for the Goods:
- 8.1.1. shall be the price set out in the Order, or if no price is quoted, the price agreed between the Supplier and Bannatyne as being generally applicable to the type of Goods ordered (or if neither of the foregoing apply, shall be such price as Bannatyne considers reasonable in the circumstances); and
- 8.1.2. shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by Bannatyne. No extra charges shall be effective unless agreed in writing and signed by Bannatyne.
- 8.2. The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by Bannatyne, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 8.3. In respect of Goods, the Supplier shall invoice Bannatyne on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice Bannatyne on completion of the Services. Each invoice shall include such supporting information required by Bannatyne to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 8.4. In consideration of the supply of Goods and/or Services by the Supplier, Bannatyne shall pay the invoiced amounts within sixty (60) days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 8.5. All amounts payable by Bannatyne under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to Bannatyne, Bannatyne shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 8.6. If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.
- 8.7. The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow Bannatyne to inspect such records at all reasonable times on request.
- 8.8. Bannatyne may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to Bannatyne against any liability of Bannatyne to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

9. Intellectual property rights

- 9.1. In respect of the Goods and any goods that are transferred to Bannatyne as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to Bannatyne, it will have full and unrestricted rights to sell and transfer all such items to Bannatyne.
- 9.2. The Supplier assigns to Bannatyne, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 9.3. The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 9.4. The Supplier shall, promptly at Bannatyne's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Bannatyne may from time to time require for the purpose of securing for Bannatyne the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to Bannatyne in accordance with clause 9.2.
- 9.5. All Bannatyne Materials are the exclusive property of Bannatyne.

10. Indemnity

- 10.1. The Supplier shall keep Bannatyne indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and

expenses) suffered incurred by Bannatyne as a result of or in connection with:

- 10.1.1. any claim made against Bannatyne for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
 - 10.1.2. any claim made against Bannatyne by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
 - 10.1.3. any claim made against Bannatyne by a third party arising out of or in connection with the supply of the Goods or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.
- 10.2. This clause 10 shall survive termination of the Contract.

11. Limitation of liability

- 11.1. Nothing in these Conditions shall limit or exclude Bannatyne's liability for:
- 11.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 11.1.2. fraud or fraudulent misrepresentation;
 - 11.1.3. any other matter for which liability cannot be properly excluded or limited.
- 11.2. Subject to clause 11.1:
- 11.2.1. Bannatyne shall under no circumstances whatever be liable to the Supplier, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, or loss of goods, loss of contract, loss of use, loss of corruption of data or information or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses arising under or in connection with the Contract; and
- 11.2.2. Bannatyne's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract (including any liability for the acts or omissions of its employees) shall in no circumstances exceed the amount of Charges applicable to the Order which gave rise to the liability in question.
- 11.3. This clause 11 shall survive termination of the Contract.

12. Insurance

During the term of the Contract and for a period of seven (7) years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on Bannatyne's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

13. Confidentiality and Data Protection

- 13.1. The Supplier shall keep in strict confidence all business information, customer information, technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier, its employees, agents or subcontractors, and any other confidential information concerning Bannatyne's business, its products and services which the Supplier may obtain. The Supplier shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Supplier's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The Supplier may also disclose such of the Bannatyne's confidential information as is required by binding order of a court or enforcement authority of competent jurisdiction, provided always that it first gives Bannatyne reasonable notice of such disclosure and takes into account Bannatyne's comments (if any) on the nature or scope of such disclosure.
- 13.2. Each party shall comply with its obligations under the Data Protection Legislation in relation to any personal data processed in accordance with this Contract.
- 13.3. Taking into account the state of the art, costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each party shall implement (and at all times keep in place) appropriate technical and organisational measures to ensure a level of security appropriate to guard against unauthorised or unlawful processing of the Personal Data and/or loss, accidental or unlawful destruction, alteration, unauthorised disclosure of, access to or damage to the Personal Data and to ensure a level of security appropriate to the risk from any processing, including as appropriate:
- 13.3.1. the pseudonymisation and encryption of Personal Data;
 - 13.3.2. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - 13.3.3. the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and
 - 13.3.4. a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- 13.4. To the extent that the Supplier processes any Personal Data on behalf of Bannatyne, it shall:
- 13.4.1. implement and maintain such technical and organisational security measures in relation to such data as are

- commensurate to the harm that would be caused by any unauthorised disclosure thereof, and to ensure that such measures are complied with;
- 13.4.2. not engage another processor of the Personal Data without prior specific or general written authorisation from the controller and, where it relies on general authorisation, inform the controller of any intended changes concerning the addition or replacement of other processors;
 - 13.4.3. where it engages another processor for carrying out processing activities on behalf of Bannatyne, impose obligations on that other processor that are substantially equivalent to the terms set out in this clause 13.4;
 - 13.4.4. only process the Personal Data strictly in accordance with Bannatyne's documented instructions from time to time, or as otherwise required by applicable laws;
 - 13.4.5. not transfer the Personal Data to an international organisation or to a place outside both the United Kingdom and the European Economic Area other than on the documented instructions of Bannatyne;
 - 13.4.6. where processing Personal Data other than on the basis of documented instructions from Bannatyne, first inform Bannatyne of the requirement to process it on the grounds of applicable laws (unless prohibited from doing so by applicable laws);
 - 13.4.7. ensure that the persons authorised to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - 13.4.8. taking into account the nature of the processing, assist Bannatyne by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of Bannatyne's obligation to respond to requests under the Data Protection Legislation in relation to data subjects' rights of access to Personal Data, rectification of Personal Data, erasure of Personal Data, restriction of Personal Data, data portability, objection to processing of Personal Data, and in relation to automated decision-making;
 - 13.4.9. taking into account the nature of the processing and the information available to the processor, assist Bannatyne in ensuring compliance with its obligations under the Data Protection Legislation in relation to the security of processing, notification of Personal Data breaches to regulatory authorities and data subjects, and carrying out and consulting with regulatory authorities in relation to data protection impact assessments;
 - 13.4.10. at the choice of Bannatyne, delete or return the Personal Data to Bannatyne after the end of the provision of the services, and delete existing copies unless required to store it by applicable laws;
 - 13.4.11. make available to Bannatyne all information necessary to demonstrate compliance with the obligations under the Data Protection Legislation in relation to the appointment and use of processors;
 - 13.4.12. allow Bannatyne access to its personnel, systems and premises on reasonable notice from time to time to audit the Supplier's compliance with the obligations set out in this clause; and
 - 13.4.13. immediately inform Bannatyne if, in its reasonable opinion, an instruction given to it by Bannatyne infringes Data Protection Legislation, or any other applicable laws relating to data protection.
- 13.5. In addition to any other remedy available to Bannatyne, the Supplier shall indemnify and keep indemnified and defend and hold harmless Bannatyne and its servants or agents in full and on demand and at the Supplier's own expense against any penalties, fines, administrative sanctions or other sums payable that are imposed on Bannatyne by a data protection supervisory authority/the Information Commissioner and against any liabilities or losses and all costs (on a full indemnity basis), claims, compensation, damages, expenses or interest incurred by Bannatyne or for which Bannatyne may become liable, in each case due to one or more of the matters listed below but howsoever arising, and whether wholly or in part resulting directly or indirectly from matters listed below, and whether or not such losses or the consequences of the matters listed below were in the parties' contemplation or were foreseeable at the date of this Contract:
- 13.5.1. any failure by the Supplier to comply with any of the Supplier's obligations under clauses 13.2-13.4;
 - 13.5.2. any breach by a sub-processor of its contract with the Supplier;
 - 13.5.3. any breach by the Supplier or a sub-processor of European DP Law; and/or
 - 13.5.4. any claim made by Bannatyne pursuant to clause 13.6.
- 13.6. The indemnity provided by the Supplier under clause 13.5 shall also cover any and all claims made by Bannatyne against the Supplier for compensation under Article 82(5) GDPR and/or under UK DP Law, including for any costs, damages or expenses paid by Bannatyne to a Data Subject in the event of a breach of European DP Law and/or for any facilities or other benefits provided at Bannatyne's expense to a Data Subject in the event of a breach of European DP Law, which is the responsibility of both parties (whether they are responsible with other controllers/processors or not).
- 13.7. The Supplier's liability under the indemnity in clause 13.5 shall, notwithstanding any provision to the contrary in the Contract, be unlimited.
- 13.8. This clause 13 shall survive termination of the Contract.

14. Termination

- 14.1. Without limiting its other rights or remedies, Bannatyne may terminate the Contract (and at its option any Services or Goods still due to be supplied under it) without liability to the Supplier by giving the Supplier not less than 10 Business Days' written notice.
- 14.2. Without limiting its other rights or remedies, Bannatyne may terminate the Contract with immediate effect by giving written notice to the Supplier if:
 - 14.2.1. the Supplier commits a material breach of the terms of the Contract (materiality to be determined solely by Bannatyne and including for this purpose any repeated breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract);
 - 14.2.2. Bannatyne reasonably believes that the financial position of the Supplier is such that it's ability to adequately

- fulfil its obligations under the Contract are in jeopardy; or
- 14.2.3 Bannatyne reasonably believes that an ongoing association with the Supplier would be harmful or potentially harmful to its goodwill or brand, or the wellbeing of its staff or customers.
- 14.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.
- 14.4 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

15. **Consequences of termination**

On termination of the Contract for any reason, the Supplier shall immediately deliver to Bannatyne all Deliverables whether or not then complete, and return all Bannatyne Materials. If the Supplier fails to do so, then Bannatyne may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

16. **Law and compliance**

- 16.1 In the course of performing its obligations under the Contract, the Supplier shall at all times comply with applicable laws and regulations and associated guidance. Without limiting the generality of the foregoing, the Supplier shall at all times comply, and procure that its agents, employees, officers and subcontractors shall comply with, Bannatyne's anti-bribery and corruption policy, as updated from time to time. Without prejudice thereto, the Supplier agrees and undertakes to Bannatyne, that in performing its obligations under the Contract, it shall not engage in any activity, practice or conduct which constitutes an offence under the Bribery Act 2010 (or any equivalent legislation in any relevant jurisdiction).
- 16.2 The Supplier acknowledges that any breach of this clause 16 shall constitute a material breach of the Contract.

17. **General**

- 17.1 Force Majeure - Bannatyne shall not be deemed to be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from an event, circumstances or cause beyond its reasonable control.
- 17.2 Assignment and other dealings
- 17.2.1 Bannatyne may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 17.2.2 The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Bannatyne.
- 17.3 Notices
- 17.3.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or e-mail (in the case of Bannatyne only where that email is delivered to the account of a statutory director of Bannatyne).
- 17.3.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.3.1; 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; or, if sent by e-mail, one Business Day after transmission.
- 17.3.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 17.4 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. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 17.5 A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.6 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 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.
- 17.7 A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 17.8 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by a statutory director of Bannatyne.
- 17.9 The Contract, 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), shall be governed by, and construed in accordance with the law of England and Wales.

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

17.11. This Contract may be executed (and, if relevant, any counterpart to it) by either party using electronic signature. The receiving party may rely on the receipt of such electronically-signed Contract (or counterpart) as if the original had been received.

17.12. The Supplier, its affiliates, subsidiaries and representatives will not, during or for a period of 6 months after termination of this Contract, directly or indirectly solicit for employment or employ (or attempt to employ) any person who is now employed or retained by Bannatyne or any affiliate of Bannatyne without the prior written consent of Bannatyne. However, nothing shall prevent the Supplier from employing any person who responds to a general recruitment advertisement.