



# **STANDARD TERMS & CONDITIONS FOR THE SUPPLY OF GOODS & SERVICES**

**25<sup>th</sup> May 2018**

## 1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business;

**Commencement Date:** has the meaning set out in Clause 2.2;

**Conditions:** these Standard Terms and Conditions, as amended from time to time in accordance with Clause 16.8;

**Contract:** the contract between the Purchaser and the Supplier for the supply of Goods and/or Services in accordance with these Conditions;

**Data Protection Legislation:** (i) the General Data Protection Regulation (*EU 2016/679*) (the "GDPR") until such time as it is no longer directly applicable as a result of the withdrawal of the UK from the European Union, (ii) any successor legislation or legislation of equivalence to the GDPR introduced in the UK after said withdrawal from the European Union, and (iii) the Data Protection Act 1998 until such times it is replaced or repealed by a new Act of Parliament;

**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);

**Goods:** the goods (or any part of them) set out in the Order and shall include any variations made to the Order in accordance with Clause 6;

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

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

**Order:** the Purchaser's order for the supply of Goods and/or Services, as set out in the Purchaser's purchase order form;

**Purchaser:** Energy Developments (UK) Limited registered in England and Wales with company number 03178463;

**Purchaser Materials:** has the meaning set out in Clause 5.3(m);

**Services:** the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification, and shall include any variations made to the Order in accordance with Clause 6;

**Service Specification:** the description or specification for Services set out in the Order;

**Supplier:** the person or firm from whom the Purchaser purchases the Goods and/or Services;

**Timetable:** the timetable for progress, to include milestone target dates where applicable, and fulfilment of the Supplier's obligations as attached to the Order;

**Variation Notice:** has the meaning ascribed to it in Clause 6.1;

**VAT:** means Value Added Tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature; and

**£:** the British Pound, being the lawful currency of the United Kingdom.

## 2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Purchaser to purchase the Goods and/or the Services from the Supplier in accordance with these Conditions.
- 2.2 The Order shall be deemed to be accepted on the earlier of:
- (a) the Supplier issuing written acceptance of the Order; or
  - (b) 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 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 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:
- (c) shall correspond with their description and any applicable Goods Specification;
  - (d) shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979 as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Purchaser, expressly or by implication, and in this respect the Purchaser relies on the Supplier's skill and judgment;
  - (e) shall where applicable, be free from defects in design, materials and workmanship and remain so for 18 months after delivery;
  - (f) shall comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
  - (g) are properly packed and secured in such manner as to enable them to reach their destination in good condition; and
  - (h) are 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.
- 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 and that it has title to and the right to sell the Goods to the Purchaser.
- 3.3 The Purchaser shall have the right to inspect and test the Goods at any time before delivery.
- 3.4 If following such inspection or testing, the Purchaser considers that the Goods do not conform, or are unlikely to comply, with the Supplier's undertakings at Clause 3.1, the Purchaser shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance with its undertakings at Clause 3.1, at no additional cost to the Purchaser.

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 the Purchaser shall have the right to conduct further inspections and tests after the Supplier has carried out any remedial actions.

#### **4. DELIVERY OF GOODS**

4.1 The Supplier shall deliver the Goods:

- (i) on the date specified in the Order or, if no such date is specified, then within 5 days of the date of the Order and the Supplier shall give 48 hours' notice prior to delivery;
- (j) to the location set out in the Order or as instructed by the Purchaser to the Supplier before delivery by giving 48 hours' notice prior to delivery (the "**Delivery Location**"); and
- (k) during the Purchaser's normal hours of business on a Business Day, or as instructed by the Purchaser to the Supplier.

4.2 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location. Title and risk in the Goods shall pass to the Purchaser on completion of delivery and upon acceptance of the Goods by the Purchaser following its confirmation that the Goods comply with all provisions of the Order.

4.3 The Supplier shall repair or replace the Goods damaged or lost in transit upon receiving written notice to that effect from the Purchaser and delivery of the Goods shall not be deemed to have taken place until replacement or repaired Goods have been delivered by the Supplier to the Purchaser, to the satisfaction of the Purchaser. The Purchaser reserves the right to hold such damaged Goods at the Supplier's risk or to return them at the risk and expense of the Supplier.

4.4 If the Supplier fails to deliver any Goods in accordance with Clause 4.1, the Purchaser may cancel the Order and is under no obligation to pay for those Goods. Time is of the essence in relation to the Supplier's delivery obligations.

4.5 The Supplier shall not deliver the Goods in instalments without the Purchaser'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 the Purchaser to the remedies set out in Clause 7.1.

4.6 The Supplier warrants that the cost of delivery and the insurance of Goods during delivery and prior to the acceptance has been included in the unit price of the Goods and shall be payable in full by the Supplier.

#### **5. SUPPLY OF SERVICES**

5.1 The Supplier shall, for the duration of this Contract, provide the Services to the Purchaser 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 the Purchaser, including the Timetable.

5.3 In providing the Services, the Supplier shall, at all times:

- (l) co-operate with the Purchaser in all matters relating to the Services, and comply with all instructions of the Purchaser;
- (m) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (n) use personnel who are suitably qualified, 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;

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- (d) 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 the Purchaser;
  - (a) provide all equipment, tools and vehicles and such other items as are required to provide the Services, all of which shall comply with all relevant health and safety standards including those prescribed by law and the Purchaser and be maintained in accordance these health and safety requirements;
  - (b) to the extent the Supplier takes, receives, uses, or acquires personal data relating to the Purchaser, its business or its personnel, protect such data and comply with the standards of care expected under Data Protection Law and in pursuance of Clause 11 herein;
  - (c) 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 the Purchaser, will be free from defects in workmanship, installation and design;
  - (d) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws, regulations, codes of practice and other requirements of any relevant government or governmental agency. To the extent that such regulations are advisory rather than mandatory, the standard of compliance achieved by the Supplier shall be best practice of the relevant industry;
  - (e) acquaint itself with any working practices, rules and procedures (including, for the avoidance of doubt, The Control of Contractors Policy) applicable to any location where the Supplier is required to perform the Services (whether or not at the Purchaser's premises), including any security and health and safety policies;
  - (f) strictly observe and comply with all health and safety rules and regulations and any other security requirements that apply at any of the Purchaser's premises (a copy of which the Supplier acknowledges has been provided to it by the Purchaser);
  - (g) be responsible for procuring that its employees and agents also comply with all health and safety rules and regulations and any other security requirements;
  - (h) immediately notify the Purchaser as soon as practicable of any health and safety hazard or potential health and safety hazard, near miss or dangerous occurrence at the Purchaser's premises of which it becomes aware;
  - (i) hold all materials, equipment and tools, drawings, specifications and data supplied by the Purchaser to the Supplier (the "**Purchaser Materials**") in safe custody at its own risk, maintain the Purchaser Materials in good condition until returned to the Purchaser, and not dispose or use the Purchaser Materials other than in accordance with the Purchaser's written instructions or authorisation;
  - (j) not do or omit to do anything which may cause, or is likely to cause, the Purchaser to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Purchaser may rely or act on the Services;
  - (k) submit to the Purchaser regular progress reports to show progress made compared with the milestones set out in the Timetable, where applicable, or as otherwise requested in writing by the Purchaser. The Supplier shall permit the Purchaser's representatives access to its premises, and shall procure that its contractors and its subcontractors permit the Purchaser's representatives access to their premises, to check on progress, provided the Purchaser has provided reasonable notice to the Supplier; and
  - (l) ensure strict compliance with the Construction (Design and Management) Regulations 2015, where applicable to the Services provided.
  - (m) be responsible for ensuring that its personnel are fit and sufficiently trained to undertake the works and that pre-screening checks have been completed, including but not limited to; Criminal Records Checks, Yearly Medicals, Drug and Alcohol Screening, provision of CITB licences and/or equivalents.

## **6. VARIATION TO SPECIFICATION OF GOODS AND/OR SCOPE OF SERVICES**

- 6.1 The Purchaser may amend the specifications or the method of manufacture of the Goods or the scope of the Services set out in the Order by sending a written notice (a "**Variation Notice**") to the Supplier. The Supplier shall manufacture the Goods and perform the Services in accordance with the Variation Notice provided that:
- (o) delivery of the Goods or performance of the Services that are the subject of the Variation Notice has not, at the time of giving the Variation Notice, been made or received; and
  - (p) the Variation Notice states such extension of time for delivery of the Goods or performance of the Services as is reasonable having regard to the nature of the variations stipulated in the Variation Notice; and
  - (q) the Purchaser shall pay to the Supplier such amount as the parties agree is reasonable in respect of the variation stipulated in the Variation Notice.
- 6.2 In determining the amount to be paid under Clause 6.1(c), the parties shall have regard to, among other things, the original unit price of the Goods or the agreed price for the original scope of Services.
- 6.3 Any failure or delay in reaching agreement over the price for the variation set out in the Variation Notice shall not excuse the Supplier from its obligations under the Contract.

## **7. PURCHASER REMEDIES**

- 7.1 If the Supplier fails to deliver the Goods and/or perform the Services in accordance with the Timetable (included as amended under Clause 6) or fails to comply with the terms of Clause 3.1 and/or Clause 5.1, the Purchaser shall, without limiting its other rights or remedies, have one or more of the following rights:
- (r) to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - (s) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
  - (t) to recover from the Supplier any costs incurred by the Purchaser in obtaining substitute goods and/or services from a third party;
  - (u) where the Purchaser 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 an amount equal to such sums refunded in full by the Supplier; and
  - (v) to claim damages for any additional costs, loss or expenses incurred by the Purchaser which are in any way attributable to the Supplier's failure to meet the dates set out in the Timetable, or any of the terms of Clause 3.1 and/or Clause 5.1.
- 7.2 If the Goods are not delivered by the dates set out in the Timetable, the Purchaser may, at its sole discretion, aim or deduct 5 per cent of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 30 per cent of the total price of the Goods. If the Purchaser exercises its rights under this Clause 7.2, it shall not be entitled to any of the remedies set out in Clause 7.1 in respect of the Goods' late delivery, but is otherwise entitled to every other remedy that may be available to it.
- 7.3 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, the Purchaser shall have one or more of the following rights, whether or not it has accepted the Goods:
- (w) to reject the Goods (in whole or in part) whether or not title has passed and to return the Goods to the Supplier at the Supplier's own risk and expense;
  - (x) to terminate the Contract with immediate effect by giving written notice to the Supplier;

- (c) 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);
- (y) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (z) to recover from the Supplier any expenditure incurred by the Purchaser in obtaining substitute goods from a third party; and
- (aa) to claim damages for any additional costs, loss or expenses incurred by the Purchaser arising from the Supplier's failure to supply Goods in accordance with Clause 3.1.

7.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

7.5 The Purchaser's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

7.6 This Clause 7 shall survive termination of the Contract.

## **8. PURCHASER'S OBLIGATIONS**

8.1 The Purchaser shall:

- (bb) provide the Supplier with reasonable access at reasonable times to the Purchaser's premises for the purpose of providing the Services; and
- (cc) provide such information as the Supplier may reasonably request for the provision of the Services and the Purchaser considers reasonably necessary for the purpose of providing the Services.

Notwithstanding the above provisions or any other provision in the Contract, to the maximum extent permitted by law, the Purchaser has no liability for any:

- (dd) representation, statement, advice, information (together "Information" which term includes without limitation any inaccuracy or insufficiency of information provided) provided by the Purchaser, whether negligently or otherwise, including without limitation liability which may arise as a result of the use of such Information; or
- (ee) omission or failure by the Purchaser to provide relevant Information; or
- (ff) indirect, incidental, special or consequential loss, or loss of profits in connection with any non-compliance or breach of this clause or the provision of or omission to provide information.

## **9. CHARGES AND PAYMENT**

9.1 The price for the Goods:

- (gg) shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the time of the Order; and
- (hh) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the Purchaser. No extra charges shall be effective unless agreed in writing and signed by the Purchaser.

9.2 The charges for the Services shall either be set out in the Order or up to a maximum amount agreed in writing by the Purchaser and the Supplier prior to the provision of the Services, and shall be the full exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Purchaser, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

- 9.3 In respect of Goods, the Supplier shall invoice the Purchaser on or at any time after completion of delivery or in instalments on dates agreed in writing by the Purchaser and the Supplier. In respect of Services, the Supplier shall invoice the Purchaser on completion of the Services or in instalments on dates agreed in writing by the Purchaser and the Supplier. Each invoice shall include such supporting information required by the Purchaser to verify the accuracy of the invoice (including any supporting information required in connection with any amounts payable pursuant to Clause 6.1(c)), including but not limited to, the relevant Order number.
- 9.4 In consideration of the supply of Goods and/or Services by the Supplier, the Purchaser shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 9.5 All amounts payable by the Purchaser under the Contract are exclusive of amounts in respect of VAT chargeable from time to time. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Purchaser, the Purchaser 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.
- 9.6 If the Purchaser fails to pay any amount properly due and payable by it under the Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of 2 per cent per annum above the base rate for the time being of Barclays Bank accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that the Purchaser disputes in good faith.
- 9.7 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 the Purchaser to inspect such records at all reasonable times on request.
- 9.8 The Purchaser may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the Purchaser to the Supplier under the Contract.
- 9.9 The Supplier agrees that any excise, custom duty or other charges imposed on Goods or Services by law (excluding VAT that is chargeable on a supply of Goods and/or Services) shall be paid by Supplier, unless specifically stated otherwise in the Order.
- 9.10 The Supplier agrees that any cost incurred due to a variation in exchange rates in respect of the Goods shall be borne by Supplier, unless specifically stated otherwise in the Order.

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1 In respect of the Goods and any goods that are transferred to the Purchaser 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 the Purchaser, it will have full and unrestricted rights to sell and transfer all such items to the Purchaser.
- 10.2 The Supplier assigns to the Purchaser, 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.
- 10.3 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.
- 10.4 The Supplier shall, promptly at the Purchaser's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Purchaser may from time to time require for the purpose of securing for the Purchaser the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Purchaser in accordance with Clause 10.2.
- 10.5 All Purchaser Materials are the exclusive property of the Purchaser.



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**11. DATA PROTECTION**

- 11.1 Both parties will comply with the requirements of the Data Protection Legislation which apply respectively to them. This Clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 11.2 The parties acknowledge that for the purposes of the Data Protection Legislation, under these Standard Terms and Conditions the Purchaser will be a Data Controller, and the Supplier to all relevant intents and purposes will be a Data Processor (where "Data Controller" and "Data Processor" have the meanings as defined in the "Data Protection Legislation"). Bespoke arrangements and individual contracts outside of these Standard Terms and Conditions will, if required, set out the scope, nature and purpose of processing by the various Suppliers, the duration of the processing and the types of "Personal Data" and categories of "Data Subject" (as respectively defined in the Data Protection Legislation).
- 11.3 Without prejudice to the generality of Clause 11.1, the Supplier will ensure that it has received or is assured that there are the appropriate consents, lawful bases, and/or notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of these Standard Terms and Conditions and the specifics of the individual Order, Service Specification or arrangement in question.
- 11.4 Without prejudice to the generality of Clause 11.1, the Supplier shall in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Contract:
- (a) process that Personal Data only on the written instructions of the Purchaser unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data ("**Applicable Laws**"). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Purchaser of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Purchaser;
  - (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to any Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - (c) ensure that all personnel (including agents and potentially sub-processors) who have access to and/or process any Personal Data are obliged to keep the Personal Data confidential;
  - (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Purchaser has been obtained and the following conditions are fulfilled:
    - (i) the Supplier or the Purchaser has provided appropriate safeguards in relation to the transfer;
    - (ii) the data subject has enforceable rights and effective legal remedies;
    - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Purchaser with respect to the processing of the Personal Data;
  - (e) assist the Purchaser in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (f) notify the Purchaser without undue delay on becoming aware of a Personal Data breach;
  - (g) at the written direction of the Purchaser delete or return Personal Data and copies thereof to the Purchaser on termination of the agreement unless required by Applicable Law to store the Personal Data; and

- (h) maintain complete and accurate records and information to demonstrate its compliance with this Clause 11 and allow for audits by an auditor selected by the Purchaser.
- 11.5 the Purchaser consents to the Supplier appointing its own suitable third-party processors of Personal Data under this Contract to the extent necessary or desirable for the Supplier to do so (the Supplier having undertaken and documented the appropriate diligence with respect to any third party processor (a sub-processor). The Supplier confirms that if personal data is in any way relevant to its contract with the Purchaser, it has already or will enter an agreement with a third-party processor incorporating terms which are substantially similar to those set out in this Clause 11. As between the Purchaser and the Supplier the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 11.
- 11.6 the Purchaser may at any time on not less than 30 days' notice revise this Clause 11 by replacing it with any applicable data controller to data processor standard clauses or similar terms forming part of an applicable/and or approved scheme for such clauses (which shall apply when replaced by attachment to this agreement which will take the form of a data processing addendum).

## **12. INDEMNITY**

- 12.1 The Supplier shall keep the Purchaser indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Purchaser as a result of or in connection with:
- (n) any claim made against the Purchaser 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 defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (o) any claim made against the Purchaser by a third party arising out of, or in connection with, the supply of the Goods or 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; and
- (p) any claim made against the Purchaser 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.
- 12.2 For the duration of the Contract and for a period of 12 months thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance (which shall include, for the avoidance of doubt, employers liability insurance) to cover the liabilities that may arise under or in connection with the Contract and shall, on the Purchaser'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.
- 12.3 This Clause 12 shall survive termination of the Contract.

## **13. CONFIDENTIALITY**

- 13.1 The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Purchaser, its employees, agents or subcontractors, and any other confidential information concerning the Purchaser's business or its products or its services which the Supplier may obtain. The Supplier shall restrict disclosure of such confidential information to its employees, agents or subcontractors as need to know it for the purpose of discharging Purchaser's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Supplier. This Clause 13 shall survive termination of the Contract.

#### **14. TERMINATION**

- 14.1 Without limiting its other rights or remedies, the Purchaser may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- (a) the Supplier commits a material or persistent breach of the Contract (including any failure to meet the dates set out in the Timetable, where applicable) and (if such a breach is remediable) fails to remedy that breach within 10 days of receipt of notice in writing of the breach.
- 14.2 Without limiting its other rights or remedies, the Purchaser may terminate the Contract:
- (ii) in respect of the supply of Services, by giving the Supplier 5 days' written notice; and
  - (jj) in respect of the supply of Goods, with immediate effect by giving written notice to the Supplier, in which case the Purchaser shall pay the Supplier fair and reasonable compensation for any work in progress on any other Goods at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 14.3 In any of the circumstances in these Conditions in which the Purchaser may terminate the Contract, where both Goods and Services are supplied, the Purchaser may instead terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

#### **15. CONSEQUENCES OF TERMINATION**

- 15.1 On termination of the Contract, or any part of it, for any reason:
- (kk) where the Services are terminated, the Supplier shall immediately deliver to the Purchaser all Deliverables, whether or not then complete, and return all Purchaser Materials. If the Supplier fails to do so, then the Purchaser may without limiting its other rights or remedies 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;
  - (ll) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
  - (mm) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

#### **16. GENERAL**

##### **16.1 Assignment and subcontracting.**

- (nn) The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Purchaser.
- (oo) The Purchaser may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

##### **16.2 Notices.**

- (pp) Any notice or other communication required to be given to a party under or in connection with this Contract ("**Notice**") shall be in writing and shall be delivered to the other party by one of the methods set out in the table below.
- (qq) A Notice is regarded as given and received at the time set out in the table below. However, if this means the Notice would be regarded as given and received outside the period between 9.00am and

5.00pm (addressee’s time) on a Business Day (“business hours’ period”), then the Notice will instead be regarded as given and received at the start of the following business hours’ period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By prepaid first-class post or recorded delivery to the nominated address	9.00am on the second Business Day after it was posted
By email to the nominated email address	<p>The earlier of:</p> <ol style="list-style-type: none"> <li>1 when the sender receives an automated message confirming delivery; and</li> <li>2 2 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,</li> </ol> <p>but if the delivery is on a day which is not a Business Day or is after 5.00pm (addressee’s time) it is deemed to be received at 9.00am on the following Business Day.</p>

(c) This clause 16.2 shall not apply to the service of any proceedings or other documents in any legal action.

16.3 Manner of payment generally.

All payments due to the Supplier under this Contract will be made in UK currency into a UK bank account nominated by the Supplier. The Purchaser may set-off and deduct from the moneys payable to the Supplier any moneys which are owing by the Supplier to the Purchaser under this Contract and which are not the subject of bona fide dispute.

16.4 Waiver and cumulative remedies.

- (a) 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.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

16.5 Severance.

- (c) If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (d) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16.6      **No partnership.**

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

16.7      **Third parties.**

A person who is not a party to the Contract shall not have any rights under or in connection with it.

16.8      **Variation.**

Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Purchaser.

16.9      **Governing law and jurisdiction.**

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, English law. The courts of England shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Contract and each of the parties irrevocably submit to the exclusive jurisdiction of such courts.