



**AGREEMENT FOR THE SUPPLY OF GOODS AND/OR  
SERVICES**

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### 1. DEFINITIONS

In this Agreement the following expressions have the meanings stated:

**“Agreement”** means the standard terms and conditions of purchase set out in this document together with any other terms and conditions set out or referred to in any Purchase Order.

**“Applicable Laws”** means all applicable laws, regulations, regulatory requirements, codes of practice and water industry standards of any jurisdiction, as amended and in force from time to time.

**“Associated Person”** has the meaning given in section 8 of the Bribery Act 2010.

**“Customer”** means the company in whose name the Purchase Order is issued.

**“Customer Materials”** has the meaning given in clause 4.2(i).

**“Deliverables”** means 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”** means the goods to be supplied by the Supplier under this Agreement as specified in the Purchase Order.

**“Health and Safety Policy”** means the Supplier’s written document which identifies all of its obligations under this Agreement in relation to safety, and provides details of the Supplier’s capacity to satisfy all necessary safety requirements.

**“Intellectual Property Rights”** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, 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.

**“Premises”** means such location in the United Kingdom as the Customer may specify in a Purchase Order or otherwise notify to the supplier in writing, from time to time.

**“Price”** means the purchase price of the Goods and/or agreed price for the Service(s) as set out in the Purchase Order.

**“Purchase Order”** means the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form.

**“Services”** means the services, including without limitation any Deliverables, to be provided by the Supplier under the Agreement as specified in the Purchase Order and/or as set out in the Specification.

**“Specification”** means any specifications, plans, drawings, data or other information relating to the description or the specification for the Goods and/or Services as agreed in writing by the Customer.

**“Supplier”** means the person or company with whom the Customer makes the Agreement.

## **2. APPLICATION**

2.1 This Agreement shall govern and be incorporated into every contract for the supply of Goods and/or Services made by or on behalf of the Customer with the Supplier, including all Purchase Orders, save where the Customer and the Supplier have expressly agreed in writing signed by each party that their contract shall be governed by alternative terms and conditions.

2.2 This Agreement shall apply to the exclusion of, and shall prevail over, any terms and conditions contained in or referred to in any documentation submitted by the Supplier or in any correspondence or elsewhere or implied by trade custom, practice or course of dealing unless specifically excluded or varied in writing by a director or other authorised representative of the Customer.

## **3. PURCHASE ORDERS**

3.1 The Customer shall provide the Supplier with binding Purchase Orders for the quantum of Goods and/or Services it requires from time to time and the actual date or dates on which it requires the Goods and/or Services to be supplied.

3.2 The Supplier shall notify the Customer in writing within 7 working days of receiving a Purchase Order whether or not it accepts the Purchase Order.

3.3 Failure to issue a written Purchase Order acceptance within the period referred to in Clause 3.2 shall be deemed an acceptance of the Purchase Order on the terms set out therein.

3.4 Upon acceptance of a Purchase Order in accordance with either Clause 3.2 or Clause 3.3, the Supplier shall be bound to supply and the Customer shall be bound to purchase the relevant Goods and/or Services.

3.5 The Customer shall be entitled to cancel any Purchase Order placed by it at any time, in whole or in part, by giving written notice to the Supplier, in which event the Customer's sole liability shall be to pay to the Supplier the Prices for the Goods and/or Services in respect of which the Customer has exercised its right of cancellation, less the Supplier's net saving of cost arising from the cancellation.

## **4. SUPPLY OF SERVICES**

4.1 The Supplier shall provide the Services to the Customer in accordance with the terms of this Agreement. The Supplier shall meet any performance dates for the Services specified in the Purchase Order or notified in writing to the Supplier by the Customer and time shall be of the essence.

4.2 In providing the Services, the Supplier shall:

- (a) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
- (b) perform the Services with reasonable care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) 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 Agreement;
- (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification (and in the absence of such specification will comply with applicable British Standards), and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) 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 Customer, will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all necessary licences and consents, and comply with all Applicable Laws;
- (h) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- (i) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier ("**Customer Materials**") in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose of or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation; and
- (j) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services.

4.3 If the Supplier fails to perform the Services by the due date specified in the Purchase Order or notified in writing to the Supplier by the Customer, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:

- (a) to terminate the Agreement with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute services from a third party;

- (d) where the Customer has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; and/or
- (e) to claim damages for any additional costs, losses or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such date.

## **5. SUPPLY OF GOODS**

5.1 In supplying the Goods, the Supplier shall:

- (a) co-operate with the Customer in all matters relating to the Goods, and comply with all instructions of the Customer;
- (b) ensure that the Goods will conform with all descriptions and specifications set out in the Specification (and in the absence of such Specification will comply with applicable British Standards), and that the Goods shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
- (c) use the best quality materials, standards and techniques and ensure that the Goods, and all materials supplied and used in the Goods, 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; and
- (e) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises.

5.2 The Goods shall be delivered to the Premises in one consignment, unless the Customer expressly agrees to accept delivery in instalments, on the date or within the period stated in the Purchase Order or notified by the Customer to the Supplier, during the Customer's usual business hours. If the Goods are to be delivered by instalments, the Agreement will be treated as a single contract and is not severable.

5.3 Where the date of delivery of the Goods is to be specified after the placing of a Purchase Order or notice by the customer to the Supplier, the Supplier shall give the Customer reasonable notice of the specified date. All delivery dates shall be subject to the Customer's approval.

5.4 The time of delivery of the Goods is of the essence. The Supplier shall notify the Customer immediately if delivery dates for the Goods cannot be met. The Customer may cancel a Purchase Order without liability to the Supplier if delivery dates for the Goods cannot be met and whether or not that option is exercised, the Customer shall have the right to recover from the Supplier damages in respect of all losses and costs resulting from such failure.

5.5 A delivery note with description and quantity of the Goods and quoting the Purchase Order number must accompany each delivery or consignment of the Goods and must be displayed prominently. On no account should a delivery note include more than one Purchase Order number.

- 5.6 The Goods shall be marked in accordance with the Customer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.
- 5.7 If the Goods are not delivered by the due date then, without prejudice to any other remedy or right available to the Customer, the Customer shall be entitled:
- (a) to deduct from the Price or (if the Customer has paid the Price) to claim from the Supplier damage for delay from the due date for delivery until actual delivery of the delayed Goods;
  - (b) to terminate the Agreement with immediate effect by giving written notice to the Supplier;
  - (c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party;
  - (d) where the Customer has paid in advance for Goods that have not been provided by the Supplier, to have such sums refunded by the Supplier; and/or
  - (e) to claim damages for any additional costs, losses or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such date.
- 5.8 If the Goods are incorrectly delivered, the Supplier will be held responsible for any additional expense incurred in delivering them to their correct destination.
- 5.9 The Customer shall be entitled to reject any Goods delivered which are not in accordance with the Purchase Order or the Specification. At its option the Customer may:
- (a) require the Supplier to repair the Goods or to supply replacement Goods which are in accordance with the Purchase Order and the Specification within 7 days; and
  - (b) whether or not the Customer has previously required the Supplier to repair the Goods or to supply any replacement Goods, treat the Purchase Order as wholly repudiated by the Supplier and require the Supplier, at its own expense, to remove the Goods and require the repayment of any part of the Price which has been paid.
- 5.10 The Customer shall not be deemed to have accepted the Goods (in whole or in part) until the Customer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent. Any inspection or testing of the Goods by the Customer shall not prejudice the Customer's right to reject defective Goods at a later date and make a claim in respect of them.
- 5.11 Where the Customer signs for the Goods on delivery as unexamined and the quantity supplied is found on examination not to comply with the ordered quantity, the Supplier shall correct the over/under order supplied at its own expense immediately on receipt of notification of the same from the Customer. Such notice shall be given within 3 days of delivery unless the Goods are in sealed packaging with the contents and quantity indicated externally. In this instance the Supplier shall correct the quantity when the discrepancy is found provided this is within a reasonable time of delivery.

- 5.12 The Supplier shall supply the Customer in good time with any instructions or other information required to enable the Customer to accept delivery of the Goods.
- 5.13 The Customer shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not the Goods are accepted by the Customer (in whole or in part).
- 5.14 The Supplier shall give to the Customer prior written notice of the delivery under the Agreement of the Goods or other materials and of packing and other items accompanying the Goods or materials or associated with their delivery of a toxic nature or otherwise hazardous to the safety or health of persons or property. The notice shall identify the hazards and give clear and full details of all precautions taken by the Supplier in respect of delivery and precautions which should be taken by the Customer in respect of the subsequent storage handling and use of the Goods.
- 5.15 Risk in the Goods shall pass to the Customer once they are delivered to the Customer at the Premises and accepted by the Customer.
- 5.16 Title in the Goods shall pass to the Customer once they are delivered to the Customer at the Premises.
- 5.17 Where the Customer resells Goods supplied under the Agreement to a third party, the Customer reserves the right to assign to that third party the benefit of all guarantees or warranties given or made by the Supplier under this Agreement.

## **6. CUSTOMER'S OBLIGATIONS**

The Customer shall provide such information to the Supplier as the Supplier may reasonably request and the Customer considers reasonably necessary for the purpose of providing the Goods and/or Services.

## **7. PRICES**

- 7.1 Subject to the Supplier performing its obligations under the Agreement, the Customer will pay to the Supplier the Price for the Goods and/or Services.
- 7.2 The Price does not include value added tax which shall be payable by the Customer to the Supplier at the prevailing rate at the date of the invoice and in the manner prescribed by law.
- 7.3 The Price for the Goods and/or Services shall be set out in the Purchase Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services and/or the supply of the Goods. Unless otherwise agreed in writing by the Customer, the Price shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services and/or the supply of the Goods.
- 7.4 Unless otherwise so stated, all Prices shall be inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of Goods to the delivery address specified by the Supplier and any duties, custom or levies other than value added tax.

7.5 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Customer.

7.6 The Customer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, whether or not shown on its own terms and conditions of sale.

## **8. TERMS OF PAYMENT**

8.1 The Supplier shall submit invoices to the Customer in such format as the Customer may require, in respect of the Goods and/or Services supplied on or after delivery of the Goods and/or completion of the Services

8.2 Invoices must be sent to the address specified in the Purchase Order.

8.3 Each invoice shall quote the Purchase Order number. On no account should more than one Purchase Order number be quoted on any one invoice.

8.4 In consideration of the Supplier performing its obligations under the Agreement, the Customer shall pay the invoiced amounts by the end of the month following the month in which a correctly rendered invoice is received, to a bank account nominated in writing by the Supplier.

8.5 The Customer shall be entitled to set off against the Price any sums owed to the Customer by the Supplier.

## **9. ACCESS TO PREMISES**

9.1 The Customer shall allow the Supplier and its authorised sub-contractors reasonable access during normal working hours to the Premises to the extent necessary for the Supplier to deliver the Goods and/or for the purpose of providing the Services. If access is required outside normal working hours, the Supplier shall arrange an appointment in advance with the Customer. The Supplier shall make sure that all of its employees and sub-contractors attending the Premises:

- (a) carry and keep visible suitable means of identification;
- (b) comply with the Customer's regulations applying to health and safety, access and security whilst at the Premises;
- (c) comply with lawful directions given by authorised personnel of the Customer relating to conduct on the Premises; and
- (d) do not interfere with the carrying out by the Customer of its activities and duties.

9.2 Unless otherwise agreed, the Supplier shall be responsible for property which it brings onto the Premises and shall remove it from the Premises on request.



## 10. POLICIES AND STANDARDS

10.1 The Supplier shall comply with all the Customer policies and procedures notified by the Customer to the Supplier from time to time insofar as they are relevant to the supply of the Goods and/or Services including, without limitation:

- (a) the Customer's health and safety policy;
- (b) all security and code of conduct policies; and
- (c) the Customer's alcohol and drugs policy statement.

10.2 The Supplier shall not commence supply of the Services and/or delivery of the Goods until the Supplier's Health and Safety Policy has been approved in writing by an authorised representative of the Customer and a permit to work or authorisation to carry out work has been issued by the Customer to the Supplier (unless the Customer notifies the Supplier that no Health and Safety Policy or permit to work is required). The Supplier shall comply and shall ensure that its employees, agents and sub-contractors comply with the Health and Safety Policy.

## 11. AUDIT

11.1 The Supplier shall arrange at its own cost for its procedures to be regularly audited for compliance with applicable industry standards by the responsible authority, and shall make the audit results available to the Customer upon request.

11.2 The Supplier shall in addition conduct its own audit of its procedures to ensure compliance with its obligations under the Agreement and shall make the audit results available to the Customer upon request.

11.3 The Supplier shall at all reasonable times and upon reasonable prior notice allow the Customer's representatives access to the Supplier's premises, employees, contractors and subcontractors to conduct an inspection and review of the Supplier's procedures and documentation produced pursuant to this Agreement to ensure such procedures and documentation facilitate compliance with this Agreement.

## 12. ANTI-CORRUPTION

12.1 The Supplier shall:

- (a) comply with all Applicable Laws relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) comply with the Customer's ethics, anti-bribery and anti-corruption policies, in each case as the Customer may update them from time to time;
- (d) have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under

the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and

- (e) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement.

12.2 The Supplier shall ensure that any person associated with the Supplier who is performing Services or providing Goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 12 (“**Relevant Terms**”). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.

12.3 Breach of this clause 12 shall be deemed a material breach of this Agreement.

12.4 For the purpose of this clause 12, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 12 a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.

### **13. CONFLICT OF INTEREST**

13.1 The Supplier warrants that it will give its advice or otherwise act impartially and independently and in the best interests of the Customer. The Supplier will not take into account directly or indirectly interests of any of its affiliates or of any benefit to any of its affiliates.

13.2 Without prejudice to the generality of Clause 13.1, the Supplier agrees to disclose to the Customer:

- (a) any introduction fee or any other benefit that it may receive as a result of taking a particular action relating to the Goods and/or Services or advising any member of the Customer to take a particular action; and
- (b) any constraint that the Supplier may have upon it that may prevent or discourage the Supplier from taking a particular action relating to the supply of the Goods and/or Services or advising the Customer to take a particular action.

### **14. SUPPLIER WARRANTIES**

14.1 The Supplier warrants and represents to the Customer that:

- (a) Goods shall be supplied with full title guarantee and will not be the subject of any security interest or adverse title;
- (b) all information provided to the Customer pursuant to this Agreement, by or on behalf of the Supplier, was when provided and remains accurate in all respects;

- (c) it shall perform its obligations under this Agreement with all reasonable skill and care using personnel of appropriate expertise and experience with regard to the specialised and technical nature of the Goods and/or Services;
- (d) the Goods and Services will be of the nature, quantity, substance and quality described in, and will comply in every respect with the provisions of, the Purchase Order and the Specification pursuant to which they are supplied;
- (e) the Goods supplied to the Customer under this Agreement shall be free from defects in materials and workmanship and shall be of satisfactory quality;
- (f) it shall comply with all Applicable Laws in performing its obligations under this Agreement;
- (g) neither the Supplier nor any of its affiliates is or has at any time engaged in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010;
- (h) no Associated Person of the Supplier or any of its affiliates has bribed another person (within the meaning given in section 7(3) of the Bribery Act 2010) intending to obtain or retain business or an advantage in the conduct of business for the Supplier and/or any of its affiliates, and the Supplier and each of its affiliates has in place adequate procedures in line with the guidance published by the Secretary of State under section 9 of the Bribery Act 2010 designed to prevent their Associated Persons from undertaking any such conduct;
- (i) neither the Supplier nor any of its affiliates nor any of their Associated Persons is or has been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body or any customer regarding any offence or alleged offence under the Bribery Act 2010, and no such investigation, inquiry or proceedings have been threatened or are pending and there are no circumstances likely to give rise to any such investigation, inquiry or proceedings; and
- (j) where the Customer is a company to which the Public Contracts Regulations 2006 or the Utilities Contracts Regulations 2006 (each as amended) apply, neither the Supplier nor any of its affiliates is ineligible to be awarded any contract or business under section 23 of the Public Contracts Regulations 2006 or section 26 of the Utilities Contracts Regulations 2006 (each as amended).

## **15. LIMITED LIABILITY**

15.1 Notwithstanding anything else in this Agreement, the Customer's liability under or in connection with this Agreement, whether arising from contract, negligence or otherwise, shall be limited as follows:

- (a) for liability arising from death or injury to persons there shall be no limit; and
- (b) for any other liability, the aggregate liability in any calendar year of this Agreement shall be limited to 100% of the Prices paid in the 12 months prior to the event giving rise to the liability.

15.2 The Customer shall not be liable to the Supplier for any:

- (a) indirect or consequential loss; or
- (b) loss of profits, loss of contracts or revenue, loss of goodwill or reputation or loss of anticipated savings.

## **16. INSURANCE**

16.1 The Supplier shall maintain in force at all times at its own expense adequate insurance against all loss, damage, injury or other claims which may be suffered or incurred by the Supplier or the Customer and which may arise in any way whatsoever under this Agreement or in respect of product liability or employer's liability. The Supplier shall provide evidence of the insurance and payment of the current premiums on request by the Customer.

## **17. INDEMNITY**

17.1 The Supplier shall indemnify the Customer from and against all claims, demands, actions, costs, expenses, liabilities and damages or losses (including all interest, penalties and legal and other professional costs and expenses) incurred by the Customer, its officers, agents and sub-contractors arising out of or in connection with:

- (a) any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Goods and/or Services;
- (b) any damage caused to the Customer's Premises by the Supplier's employees, officers, agents, sub-contractors and invitees;
- (c) any claim made against the Customer by a third party arising out of, or in connection with the supply of the Goods and/or Services to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Supplier, its employees, agents or subcontractors; and
- (d) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defective 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.

17.2 Nothing in this clause shall restrict or limit the Customer's general obligation at law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim under this indemnity.

17.3 The Customer's rights under this Agreement are in addition to its rights and remedies implied by statute and common law.

## **18. SPECIFICATIONS AND TESTING**

18.1 Any Specification supplied by the Customer to the Supplier, or specifically produced by the Supplier for the Customer, in connection with the Purchase Order, together with the Intellectual Property Rights in the Specification, shall be the exclusive property of the Customer. The Supplier shall not disclose to any third party or use any Specification supplied or produced by the Customer except to the extent that it is or becomes public

knowledge through no fault of the Supplier, or as required for the purpose of the Supplier fulfilling the Purchase Order.

18.2 The Supplier shall not unreasonably refuse any request by the Customer to inspect and test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch, and the Supplier shall provide the Customer with all facilities reasonably required for inspection and testing. Any inspection or testing of the Goods by the Customer shall not prejudice the Customer's right to reject defective Goods at a later date and make a claim in respect of them.

18.3 If as a result of inspection or testing the Customer is not satisfied that the Goods will comply in all respects with the Purchase Order, Specification and this Agreement, and the Customer so informs the Supplier within seven days of inspection or testing, the Supplier shall take such steps as are necessary to ensure compliance.

## 19. CONFIDENTIALITY

19.1 A party ("**Receiving Party**") 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, or otherwise obtained by, the Receiving Party from the other party ("**Disclosing Party**"), its officers, employees, agents, subcontractors, advisers or affiliates and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of all such confidential information to such of its officers, employees, agents, subcontractors, advisers and affiliates as need to know it for the purpose of discharging the Receiving Party's obligations under the Agreement, and shall ensure that such officers, employees, agents, subcontractors, advisers and affiliates are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause shall survive termination of the Agreement.

## 20. TERMINATION

20.1 If the Supplier commits a material breach of any of the terms of this Agreement which is not capable of remedy or is capable of remedy, but the Supplier fails to remedy such breach within 28 days of receiving written notice from the Customer specifying the breach and requiring the breach to be remedied, this Agreement will terminate with immediate effect upon the Customer giving to the Supplier notice in writing of such ongoing breach or failure.

20.2 Either party may terminate this Agreement with immediate effect by writing to the other party if the other party ceases or threatens to cease to trade, becomes insolvent, is unable to pay its debts as they fall due, has a receiver, administrative receiver, administrator or manager appointed over the whole or any part of its assets or, makes any composition or arrangement with its creditors, an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or it takes or suffers any similar or analogous procedure to any of the foregoing events in any jurisdiction.

20.3 In addition to the Customer's other termination rights set out in this Agreement, the Customer shall be entitled, at any time during the term of this Agreement, to terminate this Agreement for convenience on the provision of no less than 1 month's prior notice in writing to the Supplier.

20.4 Termination or expiry of this Agreement shall not affect either of the parties' accrued rights or liabilities or affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination or expiry.

## 21. CONSEQUENCES OF TERMINATION

21.1 On termination of the Agreement for any reason:

- (a) the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer 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 Agreement;
- (b) the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination; and
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 22. FORCE MAJEURE

22.1 "**Force Majeure Event**" means acts of God, expropriation or confiscation of facilities, any form of Government intervention, war, hostilities, rebellion, terrorist activity, local or national emergency, sabotage or riots, and floods, fires, explosions or other catastrophes. Force Majeure Event does not include strikes or other industrial action by employees of the party affected by the Force Majeure Event (the "**Affected Party**") or its subcontractors or any events caused, directly or indirectly, by an act or omission of the Affected Party or its subcontractors.

22.2 Neither party shall be responsible for failure to carry out any of its duties under this Agreement to the extent to which the failure is directly caused by a Force Majeure Event, provided that where the Affected Party is the Supplier, it:

- (a) has taken all reasonable steps to prevent and avoid the Force Majeure Event;
- (b) carries out its duties to the best level reasonably achievable in the circumstances of the Force Majeure Event;
- (c) takes all reasonable steps to overcome and mitigate the effects of the Force Majeure Event as soon as reasonably practicable, including actively managing any problems caused or contributed to by third parties and liaising with them;
- (d) on becoming aware of the Force Majeure Event promptly informs the other party (the "**Unaffected Party**") in writing that something has happened which is a Force Majeure Event, giving details of the Force Majeure Event, together with a reasonable estimate of the period during which the Force Majeure Event shall continue; and

(e) tells the Unaffected Party when the Force Majeure Event has stopped.

22.3 If the Force Majeure Event prevents the Affected Party from materially complying with its obligations under this Agreement and it continues for more than 30 days, the Unaffected Party may terminate this Agreement with immediate effect by giving written notice.

## **23. DISPUTES**

23.1 Any dispute arising out of or in connection with this Agreement (a “**Dispute**”) shall be resolved in accordance with this clause.

23.2 Either party may give to the other at any time notice in writing that a Dispute has arisen (a “**Notice**”). If the Dispute is not resolved by agreement in writing between the parties within 21 days of the Notice being given, the Dispute shall be resolved in accordance with clause 24.9(b).

## **24. GENERAL**

### **24.1 Transfer**

(a) 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 Agreement without the prior written consent of the Customer.

(b) The Customer may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent.

### **24.2 Waiver**

No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of that right or remedy nor shall any single or partial exercise of any right or remedy preclude the further exercise of that right or remedy. No waiver by either party of any breach of this Agreement shall be considered as a waiver of a preceding or subsequent breach.

### **24.3 Invalidity and severability**

If any term of this Agreement is found to be illegal, invalid or unenforceable under any Applicable Laws, such term shall, to the extent it is severable from the remaining terms, be deemed omitted from this Agreement and shall not affect the legality, validity or enforceability of the remaining terms. The Customer and the Supplier shall try to agree on a suitable clause to replace the one which is deemed omitted. The new clause should, as far as possible, achieve the same economic, legal and commercial aims of the omitted clause.

### **24.4 Notices**

(a) Any notices required to be given under this Agreement must be delivered personally or sent by pre-paid first class post or by recorded delivery or by commercial courier, to the registered address of a party or to any other address given in writing. A notice delivered by hand is served when delivered; a notice sent

by first class post is served 48 hours after posting or if delivered by commercial courier or recorded delivery, on the date and at the time that the courier's or postman's delivery receipt is signed.

- (b) This clause shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Agreement shall not be validly served if sent by e-mail.

#### **24.5 No Partnership**

Nothing in this Agreement shall be deemed to constitute a partnership between the parties nor constitute any party the agent of any other party for any purpose.

#### **24.6 Whole Agreement**

The Agreement constitutes the whole agreement between the parties relating to the transactions contemplated by this Agreement and supersedes all previous agreements between the parties relating to these transactions.

#### **24.7 Variation**

No variation to this Agreement shall be binding unless agreed in writing between the authorised representatives of the Customer and the Supplier.

#### **24.8 Contracts (Rights of Third Parties) Act 1999**

A person who is not a party to this Contract may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

#### **24.9 Governing Law**

- (a) This Agreement, and all Purchase Orders placed under it, and any non-contractual obligations arising in connection with this Agreement (and/or such Purchase Orders) shall be governed by and construed in accordance with the laws of England.
- (b) The English courts shall have exclusive jurisdiction to determine any dispute arising in connection with this Agreement including disputes relating to any non-contractual obligations.