

# UK AGRI-TECH CENTRE LIMITED (“UKATC”)

## **TERMS & CONDITIONS OF PURCHASE OF GOODS AND SERVICES**

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## 1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

|                                 |  |
|---------------------------------|--|
| <b>Acceptance Conditions</b>    | has the meaning given in clause 7.2;   |
| <b>Affiliate</b>                | means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;   |
| <b>Applicable Law</b>           | means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national or international in any relevant jurisdiction;   |
| <b>Bribery Laws</b>             | means the Bribery Act 2010 and all Applicable Laws in connection with bribery or anti-corruption and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010;   |
| <b>Business Day</b>             | means a day other than a Saturday, Sunday or bank or public holiday;   |
| <b>Conditions</b>               | means the Customer's terms and conditions of purchase set out in this document;  |
| <b>Confidential Information</b> | means any commercial, financial or technical information, information relating to the Deliverables, plans, the existence and terms of any Order, Specification or Contract and any and all information (whether recorded or supplied in permanent or transitory form) which has been, is now or at any time after the date of these Conditions is disclosed to or made available by UKATC to: the Supplier or its Employees; or (where applicable) to any company within the Supplier's Group; or to any other person at the request of the Supplier as recipient; or any information of which the Supplier becomes aware or which comes into the Supplier's control or knowledge as a result of entering into these Conditions or of providing the Services which is of a technical, commercial or financial nature (including software in various stages of development in human or machine readable form, research information, methodologies, knowledge, data, know-how, formulae, processes, designs, drawings, specifications, models, diagrams, flow charts, marketing and development plans, business plans, intellectual property rights, customer information, customer lists, actual or prospective sales contacts, photographs and samples) and which relates to UKATC or UKATC's business or that of its Group or to any of UKATC's customers or their business or that of its Group, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by the Customer in performing its obligations under, or otherwise pursuant to the Contract; |

**Contract**

means the agreement between the Supplier and the Customer for the sale and purchase of the Deliverables incorporating these Conditions and the Order, and including all its schedules, attachments, annexures and statements of work; means, as the context requires, the legally binding agreement between UKATC and the Supplier made up of either:

(a) in a tender situation - the Order, these Conditions, and any Specification; or

(b) in a non-tender situation - the Order, these Conditions, any Specification and the Supplier's acceptance of the Order whether made in writing (subject always to Conditions from 2.1 through to 2.5) or through delivering the Goods and/or providing the Services, whichever occurs first); or

(c) any written agreement between UKATC and the Supplier that incorporates these Conditions within a Schedule to such written agreement;

**Control**

has the meaning given to it in section 1124 of the Corporation Tax Act 2010 or means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **Controls**, **Controlled** and **under common Control** shall be construed accordingly;

**Controller**

shall have the meaning given in applicable Data Protection Laws from time to time;

**Customer**

means the UK Agri-Tech Centre ("UKATC") a Private Limited Company by guarantee without share capital, registered in England with registration number 15297794 whose registered office is at Innovation Centre York Science Park, Heslington, York, United Kingdom, YO10 5DG; or where so specified in the Contract, Order or any other such related documents, and any other members of UKATC's Group that is contracting with the Supplier;

**Data Protection Laws**

means all Applicable Law relating to the processing, privacy and/or use of Personal Data, as applicable to either party or the Deliverables, including:

- (a) the GDPR;
- (b) the Data Protection Act 2018;
- (c) any laws which implement any such laws;
- (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; and
- (e) all guidance, guidelines and codes of practice issued

by any relevant Data Protection Supervisory Authority relating to such Data Protection Laws (in each case whether or not legally binding);

|  |  |
|--|--|
| <b>Data Protection Supervisory Authority</b> | means any regulator, authority or body responsible for administering Data Protection Laws;   |
| <b>Data Subject</b>                          | shall have the meaning given in applicable Data Protection Laws from time to time;   |
| <b>Deliverables</b>                          | means the Goods or Services or both as the case may be;  |
| <b>Documentation</b>                         | means any descriptions, instructions, manuals, literature, technical details or other related materials supplied in connection with the Deliverables;  |
| <b>Equality &amp; Human Rights</b>           | means both the Equality Act 2010 and the Human Rights Act 1998, and any subsequent and related legislation together with any guidance as amended from time to time (and if applicable the Customer's policies in force and notified to the Supplier from time to time and if so additionally reproduced within Appendix A);  |
| <b>FOIA</b>                                  | means the Freedom of Information Act 2000 and any subsequent and related legislation together with any guidance as amended from time to time (and if applicable the Customer's policies in force and notified to the Supplier from time to time and if so additionally reproduced within Appendix A);  |
| <b>Force Majeure</b>                         | means an event or sequence of events beyond any party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake, epidemic, pandemic or other natural disaster; war, riot or civil unrest; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required for performance of the Contract; strike, lockout or boycott or other industrial action except strikes or other industrial disputes involving the Supplier's or its suppliers' workforce; |
| <b>GDPR</b>                                  | means the General Data Protection Regulation, Regulation (EU) 2016/679, as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time);   |
| <b>Goods</b>                                 | means the goods and related accessories, spare parts and Documentation (including any certification of conformity where applicable) and other physical material set out in the Order or  |

understood by the parties to be included in the Goods and to be supplied by the Supplier to the Customer in accordance with the Contract;

**Intellectual Property Rights**

means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in software, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case:

- (a) whether registered or not
- (b) including any applications to protect or register such rights
- (c) including all renewals and extensions of such rights or applications
- (d) whether vested, contingent or future
- (e) to which the relevant party is or may be entitled, and
- (f) in whichever part of the world existing;

**International Organisation**

shall have the meaning given in the applicable Data Protection Laws from time to time;

**IPR Claim**

has the meaning given in clause 13.2;

**Location**

means the address or addresses for delivery of the Goods and performance of the Services as set out in the Order or such other address or addresses as notified by the Customer to the Supplier;

**Modern Slavery**

means the Modern Slavery Act 2015 (MSA) and any subsequent and related legislation together with any guidance as amended from time to time regarding anti-slavery and human trafficking policy in force and any Customer policies if notified to the Supplier from time to time;

**MSA Offence**

has the meaning given in clause 11.1.1;

**Order**

means the Customer's order for the Deliverables as set out in the Customer's order form;

**Personal Data**

shall have the meaning given in applicable Data Protection Laws from time to time;

**Personal Data Breach**

shall have the meaning given in applicable Data Protection Laws from time to time;

|                           |   |
|---------------------------|---|
| <b>Price</b>              | has the meaning given in clause 3.1;  |
| <b>processing</b>         | has the meaning given in applicable Data Protection Laws from time to time (and related expressions, including <b>process</b> , <b>processed</b> , and <b>processes</b> shall be construed accordingly);                              |
| <b>Processor</b>          | shall have the meaning given in applicable Data Protection Laws from time to time;  |
| <b>Protected Data</b>     | means Personal Data received from or on behalf of the Customer, or otherwise obtained in connection with the performance of the Supplier's obligations under the Contract;  |
| <b>Services</b>           | means the services set out in the Order and to be supplied by the Supplier to the Customer in accordance with the Contract;   |
| <b>Specification</b>      | means the description or Documentation provided for the Deliverables set out or referred to in the Contract; and  |
| <b>Sub-Processor</b>      | means any agent, subcontractor or other third party engaged by the Supplier (or by any other Sub-Processor) for carrying out any processing activities in respect of the Protected Data;  |
| <b>Supplier</b>           | means the named party in the Contract who has agreed to sell the Deliverables to the Customer and whose details are set out in the Order;   |
| <b>Supplier IPR Claim</b> | has the meaning given in clause 13.2;   |
| <b>Supplier Personnel</b> | means all employees, officers, staff, other workers, agents and consultants of the Supplier, its Affiliates and any of their sub-contractors who are engaged in the performance of the Services from time to time;                    |
| <b>TUPE</b>               | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (TUPE) as amended from time to time, where there is a business transfer or a change in service provision (if applicable see Appendix A); |
| <b>VAT</b>                | means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Deliverables.  |

1.2 In these Conditions, unless the context otherwise requires:

- 1.2.1 a reference to the Contract includes these Conditions, the Order, and their respective schedules, appendices and annexes (if any);
- 1.2.2 any clause, schedule or other headings in these Conditions are included for convenience only and shall have no effect on the interpretation of these Conditions;

- 1.2.3 a reference to a 'party' means either the Supplier or the Customer and includes that party's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.6 a reference to a gender includes each other gender;
- 1.2.7 words in the singular include the plural and vice versa;
- 1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form **including** email;
- 1.2.10 without prejudice to the provisions of clause 17, a reference to legislation is a reference to that legislation as in force at the date of the Contract or amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract;
- 1.2.11 without prejudice to the provisions of clause 17, a reference to legislation includes all subordinate legislation made as at the date of the Contract or from time to time under that legislation; and
- 1.2.12 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

## **2 Application of these conditions**

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Supplier's quotation, sales conditions, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Customer otherwise agrees in writing.
- 2.3 No variation of these Conditions or to an Order or to the Contract, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each of the Customer and the Supplier respectively.
- 2.4 Each Order by the Customer to the Supplier shall be an offer to purchase Deliverables subject to the Contract including these Conditions.
- 2.5 An Order may be withdrawn or amended by the Customer at any time before acceptance by the Supplier. An Order shall lapse at the discretion of the Customer unless accepted by the Supplier



before the expiry of 20 (twenty) Business Days after the date of the Order. If the Supplier is unable to accept an Order, it shall notify the Customer in writing promptly.

- 2.6 Acceptance of an Order by the Supplier shall occur when it is expressly accepted by the Supplier or by any other conduct of the Supplier which the Customer reasonably considers is consistent with acceptance of the Order.

### **3 Price**

- 3.1 The price for the Deliverables shall be as set out in the Order or where no such provision is set out, shall be calculated in accordance with the Supplier's scale of charges as advised by the Supplier and received and acknowledged by the Customer before the date the Order is placed (**Price**). No increase in the Price may be made by the Supplier after the Order is placed by the Customer. For the avoidance of doubt this clause applies for the duration or any duration so specified by the Supplier to the Customer in any other documentation including tender or non-tender documentation thereof.
- 3.2 All Prices are fixed and the Price includes *packaging, delivery, unloading, unpacking, shipping, carriage, insurance* and all other charges or taxes related to the Goods and Services etc communicated either separately or in conjunction with the terms as stated within clause 3.1.

### **4 Payment**

- 4.1 The Supplier shall invoice the Customer for: (a) the Goods on or after the completion of delivery of the Goods or, if later, the Customer's acceptance of the Goods, (b) Services on or after the completion of performance of the Services or, if later, the completion of the Acceptance Conditions.
- 4.2 The Customer shall pay each validly submitted and undisputed invoice of the Supplier within 30 days following the end of the calendar month of receipt.
- 4.3 Without prejudice to any other remedy, the Customer shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Supplier in accordance with clause 27.1.
- 4.4 Time of payment is not of the essence. However, should the Customer fail to pay any valid and undisputed invoices within a maximum period of 60 (sixty) days following receipt of invoice from the Supplier, then the Customer acknowledges that it may be entitled to charge interest of 5% above the base rate of the Bank of England for each day beyond the above maximum period until the valid and undisputed invoice is paid. The Supplier acknowledges that this is an acceptable remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.5 VAT shall be charged by the Supplier and paid by the Customer at the applicable rate at the time the invoice was issued.

### **5 Cancellation**

- 5.1 The Customer shall have the right to cancel the Order for the Deliverables or for any part of the Deliverables such as Goods which have not yet been delivered to or commissioned for, and in the case of Services, performed for, the Customer.
- 5.2 In relation to any Order cancelled or part-cancelled under clause 5.1, on receipt of validly issued and properly documented evidence, the Customer shall pay for:

- 5.2.1 in respect of any Goods, that part of the price which relates to the Goods which at the time of cancellation have been delivered to, commissioned for, manufactured and ready for delivery to, in transit to the Customer; and/or
  - 5.2.2 in respect of any Goods, the costs of materials which the Supplier has purchased to fulfil the Order for the Goods which cannot be used for other orders or be returned to the Supplier's supplier of those materials for a refund; and/or
  - 5.2.3 in respect of any Services, that part of the Price that relates to the Services which, at the time of cancellation have been paid for or contractually committed by the Supplier and cannot be cancelled.
- 5.3 To the maximum extent possible, the Supplier shall mitigate all costs relating to the Order immediately upon receipt of cancellation under this clause 5.

## **6 Delivery and performance**

- 6.1 The Goods shall be delivered by the Supplier, or its nominated carrier, to the Location on the date(s) specified in the Order.
- 6.2 The Goods shall be deemed delivered on arrival or completion of unloading only of the Goods at the Location by the Supplier or its nominated carrier (as the case may be).
- 6.3 The Services shall be performed by the Supplier at the Location on the date(s) specified in the Order.
- 6.4 The Services shall be deemed performed on confirmation of completion of the Acceptance Conditions by the Customer in writing or completion of the performance of the Services as specified in the Order and/or any instructions/notification from the Customer to the Supplier.
- 6.5 The Goods shall not be delivered and the Services shall not be performed in instalments unless otherwise specified in the Order and/or agreed in writing by the Customer.
- 6.6 Each delivery of Goods or performance of the Services shall be accompanied by a delivery note stating:
  - 6.6.1 the date of the Order;
  - 6.6.2 the relevant Customer and Supplier details;
  - 6.6.3 if Goods, the product numbers and type and quantity of Goods in the delivery;
  - 6.6.4 if Services, the category, type and quantity of Services performed;
  - 6.6.5 any special instructions, handling and other requests;
  - 6.6.6 in the case of Services, details of the Supplier Personnel performing the Services;
  - 6.6.7 in the case of Goods, whether any packaging material is to be returned, in which case the Customer shall, after the Goods are unpacked, make them available for collection by the Supplier at the Supplier's expense for a period not exceeding 15 (fifteen) Business days (or earlier if there are health and safety and/or space constraints reasons); and

- 6.6.8 any additional information requested by the Customer as set out in the Order. For the avoidance of doubt such information also includes any certificates of conformity, warranty, servicing, guarantees information etc as required and pertinent to such Goods and Services.
- 6.7 Time of delivery or performance (as the case may be) is of the essence, unless such conditions have been agreed as being acceptably waived, but only at the sole discretion of the Customer whom is not obligated to accept such deviations. If the Supplier fails to deliver any of the Goods or perform any of the Services by the date specified in the Order, or a Customer acceptable notification of such time of delivery or performance, then the Customer shall (without prejudice to its other rights and remedies) be entitled at the Customer's sole discretion:
- 6.7.1 to terminate the Contract in whole or in part;
  - 6.7.2 to purchase the same or similar Deliverables from another supplier;
  - 6.7.3 to refuse to accept the delivery or performance (as the case may be) of any more Deliverables under the Contract;
  - 6.7.4 to recover from the Supplier all costs and losses resulting to the Customer from the failure in performance or delivery (as the case may be), including the amount by which the price payable by the Customer to acquire those Deliverables from another supplier exceeds the price payable under the Contract and any loss of profit; and
  - 6.7.5 all or any of the foregoing.
- 6.8 The provisions of clause 6.7 shall not apply to the extent the Customer fails to make the Location available to the Supplier for performance of the Services.
- 6.9 If the Customer is unable or opts not to accept delivery of the Goods on the date or within the period set out in the Order, the Supplier shall store and insure the Goods pending delivery and the Customer shall pay reasonable storage charges to the Supplier, providing such proof of said charges for storage is acceptable to the Customer.
- 7 Acceptance, rejection and inspection**
- 7.1 The Customer shall not have accepted, or be deemed to have accepted, the Deliverables until the Acceptance Conditions are fulfilled and the Customer has notified confirmation of such to the Supplier in writing.
- 7.2 The **Acceptance Conditions** are that:
- 7.2.1 for Goods, the Goods and delivery note have been delivered to or at the Location;
  - 7.2.2 for Services, the Services have been performed at the Location; and
  - 7.2.3 all pre-delivery and post-delivery acceptance tests and inspections have been completed to the satisfaction of the Customer at its sole discretion; and/or
  - 7.2.4 the Customer has notified the Supplier in writing that the Deliverables have been delivered or performed (as the case may be) in full compliance with the Order and the Conditions of the Contract including this clause 7.
- 7.3 The Customer shall be entitled to reject any Deliverables which are not in full compliance with the terms and conditions of the Contract. Any acceptance of defective, late or incomplete Deliverables

or any payment made in respect thereof, shall not constitute a waiver of any of the Customer's rights and remedies, including its right to reject.

- 7.4 If the Goods are rejected due to the volume of the Goods exceeding the tolerances (if any) specified in the Order, the Supplier shall promptly and at its own cost arrange for redelivery of the correct volume.
- 7.5 Any rejected Goods may be returned to the Supplier by the Customer at the Supplier's cost and risk. The Supplier shall pay to the Customer a reasonable charge for storing and returning any of the Goods over-delivered or rejected.
- 7.6 The Customer may inspect and test the Deliverables during performance or during manufacture or processing prior to despatch, and the Supplier shall provide the Customer with access to and use of all facilities reasonably required.
- 7.7 Any inspection or testing of the Deliverables shall not be deemed to be acceptance of the Deliverables or a waiver of any of the Customer's other rights and remedies, including its right to reject.
- 7.8 The rights of the Customer in this clause 7 are without prejudice to the Customer's other rights and remedies under the Contract including under clause 9.

## **8 Title and risk**

- 8.1 Risk in the Goods shall pass to the Customer on the later of:

- 8.1.1 delivery of the Goods to the Customer as set out in clause 6; or
- 8.1.2 the Customer's acceptance of the Goods as set out in clause 7.

The Supplier shall unload the Goods in accordance with the Customer's directions and at the Supplier's risk.

- 8.2 Title to the Goods shall pass to the Customer on the sooner of:

- 8.2.1 payment by the Customer for the Goods under clause 4; or
- 8.2.2 delivery of the Goods to the Customer under clause 6.

- 8.3 The passing of title shall not prejudice any other of the Customer's rights and remedies, including its right to reject.
- 8.4 Neither the Supplier, or any other person, shall have a lien on, right of stoppage in transit or other rights in or to any Goods title to which have vested in the Customer or any specifications or materials of the Customer, and the Supplier shall ensure that relevant third parties accept the exclusion of such lien and rights.
- 8.5 The Supplier warrants and represents that it:
  - 8.5.1 has at the time the Contract is made full, clear and unencumbered title to the Goods, and the full, clear and unencumbered right to sell and deliver them to the Customer; and
  - 8.5.2 shall hold such title and right to enable it to ensure that the Customer shall acquire a valid, unqualified title to the Goods and shall enjoy quiet possession of them.

## 9 Warranty

- 9.1 The Supplier warrants and represents that it shall:
- 9.1.1 have all consents, licences and authorisations necessary to deliver and perform the Deliverables;
  - 9.1.2 ensure the Contract is executed by a duly authorised signatory on behalf of Supplier;
  - 9.1.3 provide high quality Documentation for the Deliverables;
  - 9.1.4 ensure compliance and fulfilment of its obligations in accordance with the Order and the Contract;
  - 9.1.5 observe, and ensure that the Supplier Personnel observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises including the Location;
  - 9.1.6 ensure that the Supplier Personnel use reasonable skill and care in the delivery and performance of the Deliverables;
  - 9.1.7 keep the Customer fully informed of all activities concerning the Deliverables and provide the Customer with activity reports on request;
  - 9.1.8 if so requested by the Customer, conduct a power on/off test; and
  - 9.1.9 conduct such tests, including pre-delivery and post-delivery acceptance tests and inspections, in relation to the Deliverables prior to delivery or performance as the Customer may require at its sole discretion;
- 9.2 The Supplier warrants and represents that, the Deliverables shall for a period of 24 (twenty four) months or an agreed maximum or minimum period outwith the aforementioned period but only with the prior agreement of the Customer from delivery or acceptance (the **Warranty Period**):
- 9.2.1 conform in all material and/or expected and acceptable respects to any sample, and to the quality and description of the Specification;
  - 9.2.2 be free from all material and/or expected and acceptable defects in design, material and workmanship;
  - 9.2.3 comply with all Applicable Laws, standards and best industry practice;
  - 9.2.4 if Goods, be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and any industry standard quality standards thereof and
  - 9.2.5 if Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II, s 13; and any industry standard quality standards thereof and
  - 9.2.6 be fit for purpose and any purpose held out by the Supplier and set out in the Order and as otherwise required to meet the Customer's needs; and

- 9.2.7 any media on which the results of the Services are supplied shall be free from defects in material and workmanship and of satisfactory quality within the meaning of the Sale of Goods Act 1979; and any industry standard quality standards thereof.
- 9.3 The Supplier agrees that the approval by the Customer of any design or Specification provided by the Supplier shall not relieve the Supplier of any of its obligations under this clause 9.
- 9.4 The Supplier warrants that it understands the Customer's business and needs.
- 9.5 The Customer may reject any Deliverables that do not comply with clause 9.2 and the Supplier shall, at the Customer's option, promptly remedy, repair, replace, correct, re-perform or refund the price of any such Deliverables provided that the Customer serves a written notice on the Supplier within the Warranty Period that some or all of the Deliverables do not comply with clause 9.2.
- 9.6 The provisions of these Conditions shall apply to any Deliverables that are remedied, repaired, replaced, corrected or re-performed with effect from the date of the delivery or performance or acceptance of the remedied, repaired, replaced, corrected or re-performed Deliverables.
- 9.7 The Customer's rights under these Conditions are in addition to, and do not exclude or modify, the rights and conditions contained in the Supply of Goods and Services Act 1982, s 12 to 16 and the Sale of Goods Act 1979, s 13 to 15.
- 9.8 The Customer shall be entitled to exercise its rights under clause 9 regardless of whether the Deliverables have been accepted under the Acceptance Conditions and notwithstanding that the Deliverables were not rejected following their initial inspection under clause 7.3.
- 10 Anti-bribery**
- 10.1 For the purposes of this clause 10 the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 10.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:
- 10.2.1 all of that party's personnel;
- 10.2.2 all others associated with that party; and
- 10.2.3 all of that party's subcontractors;
- involved in performing the Contract so comply.
- 10.3 Without limitation to clause 10.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 10.4 The Supplier shall immediately notify the Customer as soon as it becomes aware of a breach or possible breach by the Customer of any of the requirements in this clause 10.

- 10.5 Any breach of this clause 10 by the Supplier shall be deemed a material breach of the Contract that is not remediable and shall entitle the Customer to immediately terminate the Contract by notice under clause 19.1.1.

## 11 Anti-slavery, equality and human rights etc

- 11.1 The Supplier undertakes, warrants and represents that:

11.1.1 neither the Supplier nor any of its officers, employees, agents or subcontractors has:

- (a) committed an offence under the Modern Slavery Act 2015 (a **MSA Offence**); Equality Act 2010; Human Rights Act 1998 and any rights still retained within the UK regarding such articles within the European Convention on Human Rights (ECHR); or
- (b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015, Equality Act 2010, Human Rights Act 1998 and ECHR ; or
- (c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015, Equality Act 2010, Human Rights Act and EHCR; and that;

11.1.2 it shall comply with the Modern Slavery Act 2015 and any Modern Slavery Policy; the Equality Act 2010; the Human Rights Act 1998 and any rights still retained within the UK regarding such articles within the ECHR; and

11.1.3 it shall comply with any of the Customer's modern slavery and human trafficking, equality, human rights and any such related policies; and

11.1.4 it has implemented due diligence procedures to ensure compliance with the Modern Slavery Act 2015 and any Modern Slavery Policy; the Equality Act 2010; the Human Rights Act 1998 and any rights still retained within the UK regarding such articles within the ECHR as far as it is reasonably practicable in its business and supply chain, and those of its officers, employees, agents or subcontractors, which will be made available to the Customer on request at any time throughout the Contract;

11.1.5 it shall notify the Customer immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or sub-contractors have breached or potentially breached any of the Supplier's obligations under clause 11.1. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations.

- 11.2 Any breach of clause 11.1 by the Supplier shall be deemed a material breach of the Contract and shall entitle the Customer to terminate the Contract pursuant to clause 19.1.1 with immediate effect.

## 12 Anti-tax evasion facilitation

- 12.1 For the purposes of this clause 12:

12.1.1 the expressions '**associated with**', '**prevention procedures**', '**UK Tax Evasion Offence**' and '**Foreign Tax Evasion Offence**' shall be construed in accordance with Part 3 of the Criminal Finances Act 2017 (**CFA 2017**) and guidance published under it;

12.1.2 **Corporate Failure to Prevent Offence** means an offence under section 45 and/or section 46 of CFA 2017 and any other applicable United Kingdom laws, legislation, statutory



instruments and regulations in relation to preventing the facilitation of tax evasion and any similar or equivalent laws in any other relevant jurisdiction;

12.1.3 **Supplier Associated Persons** means all or any of the following:

- (a) persons associated with the Supplier (**Supplier's Associates**); and
- (b) persons associated with any of the Supplier's Associates;

in each case, involved in performing services for or on behalf of the Supplier in connection with the Services and the Contract.

12.2 The Supplier shall ensure that it and the Supplier Associated Persons shall not by any act or omission commit, or cause, facilitate or contribute to the commission by any person including the Customer, of a:

12.2.1 Corporate Failure to Prevent Offence;

12.2.2 UK Tax Evasion Offence; or

12.2.3 Foreign Tax Evasion Offence

in connection with the performance of the Services and the Contract.

12.3 The Supplier shall not, and shall use all reasonable endeavours to ensure that Supplier Associated Persons shall not, solicit or engage with or take steps to solicit or engage with any person associated with the Customer to facilitate the commission of a UK Tax Evasion Offence or a Foreign Tax Evasion Offence in connection with the performance of the Services and the Contract.

12.4 The Supplier shall, and shall procure that Supplier Associated Persons shall, pay, in full and in a timely manner, all taxes due and payable relating to all monies, remuneration, profit and value received or payable by the Supplier or any Supplier Associated Persons in connection with the performance of the Services or with the Contract or otherwise.

12.5 Without prejudice to clause 12.2, the Supplier shall ensure that:

12.5.1 it and all relevant Supplier Associated Persons have in place such **prevention procedures** as it is reasonable in all the circumstances to expect the Supplier and such persons to have in place to prevent any breach of this clause 12 and comply with the Customer's prevention procedures as notified to the Supplier from time to time; and

12.5.2 its own policies and other prevention procedures and those of relevant Supplier Associated Persons are endorsed by the Supplier or relevant Supplier Associated Persons' top-level management and include clear written guidance and training to each of the Supplier Associated Persons involved in providing the Services or with the Contract. Such policies and procedures shall include the following:

- (a) the procedures that each such person should follow if they are requested to facilitate a UK Tax Evasion Offence or a Foreign Tax Evasion Offence;
- (b) acceptable conduct in relation to engagement with customers, clients and Supplier Associated Persons;
- (c) risk assessments and due diligence procedures for identifying tax evasion facilitation risks in relation to customers and Supplier Associated Persons; and



- (d) the Supplier's procedures for taking action to inform the relevant enforcement bodies or regulatory authorities about requests to facilitate a UK Tax Evasion Offence or a Foreign Tax Evasion Offence

and the Supplier shall provide the Customer on request with copies of these policies (and prompt notice of any material changes to the same from time to time);

12.6 Without limitation to clauses 12.2, 12.3, 12.4 and 12.5 above, the Supplier shall:

12.6.1 ensure that all Supplier Associated Persons involved in providing the Services or with the Contract have been vetted and that due diligence has been undertaken and is undertaken on a regular continuing basis to such standard or level of assurance as is reasonably necessary in relation to a person in that position in the relevant circumstances;

12.6.2 maintain accurate and up to date records of:

- (a) any requests to facilitate any UK Tax Evasion Offence or any Foreign Tax Evasion Offence made to the Supplier or any Supplier Associated Persons in connection with the Services or with the Contract either in the United Kingdom or elsewhere;
- (b) any action taken by the Supplier to inform the relevant enforcement bodies or regulatory authorities that the Supplier or any Supplier Associated Person has been requested to facilitate a UK Tax Evasion Offence or a Foreign Tax Evasion Offence (except to the extent that the Supplier is prevented by law from doing so);
- (c) its compliance with its obligations under this clause 12 and all training and guidance provided to Supplier Associated Persons in respect of the obligations under this clause and applicable laws for the prevention of tax evasion;
- (d) the Supplier's monitoring of compliance by Supplier Associated Persons with the applicable policies and procedures as required by clause 12.5;
- (e) the measures that the Supplier has taken in response to any incidence of suspected or actual tax evasion or facilitation of tax evasion or breach of this clause 12 (including the Supplier's relevant internal reporting and disciplinary procedures); and

12.6.3 maintain and provide such access to the records or information referred to in clause 12.6.2 in accordance with its obligations in *relevant record keeping, inspection and audit provision*; and

12.6.4 ensure all Supplier Associated Persons involved in performing services in connection with the Contract are subject to and at all times comply with equivalent obligations to the Supplier's under this clause 12 and the Supplier shall be liable to the Customer for any act or omission by any such person in breach of any of the obligations under this clause 12 as if this was an act or omission of the Supplier itself.

12.7 The Supplier warrants and represents that it has not, and to the best of its knowledge, information and belief, no Supplier Associated Persons have:

12.7.1 been investigated in connection with, or charged with having committed or facilitated the commission of any UK Tax Evasion Offence or any Foreign Tax Evasion Offence;

12.7.2 received any court orders, warrants, oral or written notices from a government prosecuting authority concerning any actual or alleged violation by it of any UK Tax Evasion Offence or any Foreign Tax Evasion Offence; or

12.7.3 received any report (including a report from the Supplier's external auditors, any Supplier Associated Persons or any other person) or discovered any evidence suggesting that the

Supplier or any Supplier Associated Persons has committed or facilitated the commission of any UK Tax Evasion Offence or any Foreign Tax Evasion Offence.

- 12.8 The Supplier shall immediately notify the Customer as soon as it becomes aware of any allegation, investigation, evidence or report relating to a breach or possible breach of any of the requirements in this clause 12.
- 12.9 Any breach of this clause 12 by the Supplier shall be deemed a material breach of the Contract that is not remediable and entitle the Customer to immediately terminate the Contract by notice under clause 19.1.1.

### **13 Indemnity and insurance**

- 13.1 The Supplier shall indemnify, and keep indemnified, the Customer and its Affiliates from and against any losses, damages, liability, costs (including legal fees) and expenses which the Customer or its Affiliates may suffer or incur directly or indirectly from as a result of any:

13.1.1 subject to clause 13.2, alleged or actual infringement by the Supplier or its Affiliates of a third party's Intellectual Property Rights or other rights in connection with the supply or performance or manufacture of the Deliverables under the Contract (**IPR Claim**);

13.1.2 claim made against the Customer or its Affiliates in respect of any losses, damages, liability, costs and expenses sustained by the employees or agents or any customer of the Customer or of its Affiliates or any third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Deliverables or from a direct or indirect breach or negligent performance or failure or delay in performance of the Contract by the Supplier;

13.1.3 defects in materials, quality, workmanship or performance of the Deliverables.

- 13.2 If any IPR Claim is made or is reasonably likely to be made against the Customer, the Supplier shall promptly and at its own expense either:

13.2.1 procure for the Customer the right to continue using and possessing the relevant Intellectual Property Rights; or

13.2.2 modify or replace the infringing part of the Intellectual Property Rights and without adversely affecting the functionality of the Intellectual Property Rights as set out in the Contract so as to avoid the infringement or alleged infringement,

provided that if, having used reasonable endeavours, neither of the above can be accomplished on reasonable terms, the Supplier shall (without prejudice to the indemnity above) refund the price paid by Customer in respect of the affected Intellectual Property Rights.

- 13.3 The Supplier shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom or such other country by agreement in writing with the Customer insuring the Services and any of the Customer's materials in the Supplier's possession against the usual risks, including accident, fire and theft, for their full replacement value until the risk in them passes to the Customer, and insuring against all other risks that a prudent Supplier should consider reasonable. On request, the Supplier shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable. The Supplier shall on request assign to the Customer the benefit of such insurance.

## **14 Limitation of liability**

- 14.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 14.
- 14.2 Subject to clause 14.5 the Customer shall not be liable for consequential, indirect or special losses.
- 14.3 Subject to clause 14.5 the Customer shall not be liable for any of the following (whether direct or indirect):
- 14.3.1 loss of profit;
  - 14.3.2 loss of revenue;
  - 14.3.3 loss of use of data that is not Protected Data or unprotected;
  - 14.3.4 loss of use;
  - 14.3.5 loss of production;
  - 14.3.6 loss of contract;
  - 14.3.7 loss of commercial opportunity;
  - 14.3.8 loss of savings, discount or rebate (whether actual or anticipated);
  - 14.3.9 harm to reputation or loss of goodwill; and
  - 14.3.10 loss of business.
- 14.4 Notwithstanding clauses 14.22 and 14.33, and without limiting the Customer's entitlement to recover other types of loss, the parties agree that the Customer may recover the following from the Supplier as direct loss:
- 14.4.1 the cost of selecting, procuring, installing and testing replacement goods or services;
  - 14.4.2 wasted expenditure or unnecessary charges incurred by the Customer (including regulatory fines);
  - 14.4.3 liability to third parties (including customers);
  - 14.4.4 the cost of rectifying lost or damaged data; and
  - 14.4.5 and any other recoverable losses so deemed as acceptable and judged from a litigation perspective.
- 14.5 The limitations of references of items of liability set out in clauses 14.2 to 14.3 shall not apply in respect of any indemnities given by either party under the Contract.
- 14.6 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 14.6.1 death or personal injury caused by negligence;

14.6.2 fraud or fraudulent misrepresentation;

14.6.3 any other losses which cannot be excluded or limited by Applicable Law;

14.6.4 any losses caused by wilful misconduct.

## **15 Intellectual property rights**

All Specifications provided by the Customer and all Intellectual Property Rights in the Deliverables made or performed in accordance with such Specifications shall vest in and remain at all times the property of the Customer and such Specifications may only be used by the Supplier as necessary to perform the Contract. The Supplier assigns (or shall procure the assignment) to the Customer absolutely, with full title guarantee, all right, title and interest in any such Intellectual Property Rights, and the Supplier shall do all such things and sign all documents necessary in the Customer's opinion to so vest all such Intellectual Property Rights in the Customer, and to enable the Customer to defend and enforce such Intellectual Property Rights, and the Supplier hereby confirms that it has waived or procure a waiver of applicable moral rights.

## **16 Confidentiality and announcements**

16.1 The Supplier shall keep confidential all Confidential Information of the Customer and of any Affiliate of the Customer and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:

16.1.1 subject to clause 16.4, any information which was in the public domain at the date of the Contract;

16.1.2 subject to clause 16.4, any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;

16.1.3 subject to clause 16.4, any information which is independently developed by the Supplier without using information supplied by the Customer or by any Affiliate of the Customer; or

16.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

16.2 This clause shall remain in force in perpetuity after termination of the Contract.

16.3 Subject to clause 16.4, the Supplier shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

16.4 To the extent any Confidential Information is Protected Data such Confidential Information may be disclosed or used only to the extent such disclosure or use is in compliance with and does not conflict with the provisions of clause 17.

## **17 Processing of personal data**

17.1 Unless otherwise expressly stated in the Contract:

17.1.1 the Supplier's obligations and the Customer's rights and remedies under this clause 17 are cumulative with, and additional to, any other provisions of the Contract; and

17.1.2 this clause 17 shall prevail over any other provision of the Contract in the event of any conflict.

- 17.2 The parties agree that the Customer is a Controller and that the Supplier is a Processor for the purposes of processing Protected Data pursuant to the Contract. The Supplier shall, and shall ensure its Sub-Processors and each of the Supplier Personnel shall, at all times comply with all Data Protection Laws in connection with the processing of Protected Data and the provision of the Deliverables and shall not by any act or omission cause the Customer (or any other person) to be in breach of any of the Data Protection Laws. Nothing in the Contract relieves the Supplier of any responsibilities or liabilities under Data Protection Laws.
- 17.3 The Supplier shall indemnify and keep indemnified the Customer against:
- 17.3.1 all losses, claims, damages, liabilities, fines, interest, penalties, costs, charges, sanctions, expenses, compensation paid to Data Subjects (including compensation to protect goodwill and ex gratia payments), demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a Data Protection Supervisory Authority) arising out of or in connection with any breach by the Supplier of its obligations under this clause 17; and
- 17.3.2 all amounts paid or payable by the Customer to a third party which would not have been paid or payable if the Supplier's breach of this clause 17 had not occurred.
- 17.4 The Supplier shall only process (and shall ensure Supplier Personnel only process) the Protected Data in accordance with clause 17, the Contract and the Customer's written instructions from time to time (including when making any transfer to which clause 17.9 relates) except where otherwise required by applicable law (and in such a case shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest). The Supplier shall immediately inform the Customer if any instruction relating to the Protected Data infringes or may infringe any Data Protection Law. The Supplier shall retain records of all instructions relating to the Protected Data received from the Customer.
- 17.5 The Supplier shall at all times implement and maintain appropriate technical and organisational measures to protect Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.
- 17.6 The Supplier shall:
- 17.6.1 not permit any processing of Protected Data by any agent, subcontractor or other third party (except its own employees that are subject to an enforceable obligation of confidence with regards to the Protected Data) without the prior specific written authorisation of that Sub-Processor by the Customer and only then subject to such conditions as the Customer may require;
- 17.6.2 ensure that access to Protected Data is limited to the authorised persons who need access to it to supply the Deliverables;
- 17.6.3 prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a binding written contract containing the same obligations as under this clause 17 in respect of Protected Data that (without prejudice to, or limitation of, the above):
- (a) includes providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing of the Protected Data will meet the requirements of all Data Protection Laws; and
- (b) is enforceable by the Supplier,

and ensure each such Sub-Processor complies with all such obligations.

- 17.6.4 remain fully liable to the Customer under the Contract for all the acts and omissions of each Sub-Processor and each of the Supplier Personnel as if they were its own; and
- 17.6.5 ensure that all persons authorised by the Supplier or any Sub-Processor to process Protected Data are reliable and:
- (a) adequately trained on compliance with this clause 17 as applicable to the processing;
  - (b) informed of the confidential nature of the Protected Data and that they must not disclose Protected Data;
  - (c) subject to a binding and enforceable written contractual obligation to keep the Protected Data confidential; and
  - (d) provide relevant details and a copy of each agreement with a Sub-Processor to the Customer on request.
- 17.7 The Supplier shall (at its own cost and expense):
- 17.7.1 promptly provide such information and assistance (including by taking all appropriate technical and organisational measures) as the Customer may require in relation to the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws); and
- 17.7.2 provide such information, co-operation and other assistance to the Customer as the Customer requires (taking into account the nature of processing and the information available to the Supplier) to ensure compliance with the Customer's obligations under Data Protection Laws, including with respect to:
- (a) security of processing (including with any review of security measures);
  - (b) data protection impact assessments (as such term is defined in Data Protection Laws);
  - (c) prior consultation with a Data Protection Supervisory Authority regarding high risk processing; and
  - (d) any remedial action and/or notifications to be taken in response to any Personal Data Breach and/or any complaint or request relating to either party's obligations under Data Protection Laws relevant to the Contract, including (subject in each case to the Customer's prior written authorisation) regarding any notification of the Personal Data Breach to Data Protection Supervisory Authorities and/or communication to any affected Data Subjects.
- 17.8 The Supplier shall (at no cost to the Customer) record and refer all requests and communications received from Data Subjects or any Data Protection Supervisory Authority to the Customer which relate (or which may relate) to any Protected Data promptly (and in any event within 3 (three) days of receipt) and shall not respond to any without the Customer's express written approval and strictly in accordance with the Customer's instructions unless and to the extent required by applicable law.
- 17.9 The Supplier shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to any country or territory outside the United Kingdom or to any International Organisation without the prior written authorisation of the Customer (which may be refused or granted subject to such conditions as the Customer deems necessary).

- 17.10 The Supplier shall maintain complete, accurate and up to date written records of all categories of processing activities carried out on behalf of the Customer. Such records shall include all information necessary to demonstrate its and the Customer's compliance with this clause 17, the information referred to in Articles 30(1) and 30(2) of the GDPR and such other information as the Customer may reasonably require from time to time. The Supplier shall make copies of such records available to the Customer promptly (and in any event within 5 (five) Business days) on request from time to time.
- 17.11 The Supplier shall (and shall ensure all Sub-Processors shall) promptly make available to the Customer (at the Supplier's cost) such information as is required to demonstrate the Supplier's and the Customer's compliance with their respective obligations under this clause 17 and the Data Protection Laws, and allow for, permit and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose at the Customer's request from time to time. The Supplier shall provide (or procure) access to all relevant premises, systems, personnel and records during normal business hours for the purposes of each such audit or inspection upon reasonable prior notice (not being more than 2 (two) Business Days) and provide and procure all further reasonable co-operation, access and assistance in relation to any such audit or inspection.
- 17.12 The Supplier shall promptly (and in any event within 24 (twenty four) hours or as is reasonably practicable:
- 17.12.1 notify the Customer if it (or any of its Sub-Processors or the Supplier Personnel) suspects or becomes aware of any suspected, actual or threatened occurrence of any Personal Data Breach in respect of any Protected Data; and
- 17.12.2 provide all information as the Customer requires to report the circumstances referred to in clause 17.12.1 to a Data Protection Supervisory Authority and to notify affected Data Subjects under Data Protection Laws.
- 17.13 The Supplier shall (and shall ensure that each of the Sub-Processors and Supplier Personnel shall) without delay (and in any event within 3 (three) days), at the Customer's written request, either securely delete or securely return all the Protected Data to the Customer in such form as the Customer reasonably requests after the earlier of:
- 17.13.1 the end of the provision of the relevant Deliverables related to processing of such Protected Data; or
- 17.13.2 once processing by the Supplier of any Protected Data is no longer required for the purpose of the Supplier's performance of its relevant obligations under the Contract,
- and securely delete existing copies (except to the extent that storage of any such data is required by applicable law and, if so, the Supplier shall inform the Customer of any such requirement).
- 17.14 This clause 17 shall survive termination or expiry of the Contract for any reason.
- 17.15 The Supplier shall perform all its obligations under this clause 17 at no cost to the Customer.
- 17.16 Nothing in this Contract affects the rights of Data Subjects under Data Protection Laws (including those in Articles 79 and 82 of the GDPR or in any similar Data Protection Laws) against the Customer, the Supplier or any Sub-Processor.



## **18 Force majeure**

18.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:

18.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and

18.1.2 uses best endeavours to minimise the effects of that event.

18.2 If, due to Force Majeure, a party:

18.2.1 is or shall be unable to perform a material obligation; or

18.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 14 (fourteen) days or without exception total of more than 30 (thirty) days in any consecutive period of 60 (sixty) days;

the other party may, within 30 (thirty) days, terminate the Contract on immediate notice.

## **19 Termination**

19.1 The Customer may terminate the Contract or any other contract which it has with the Supplier at any time by giving notice in writing to the Supplier if:

19.1.1 the Supplier commits a material breach of the Contract and such breach is not remediable;

19.1.2 the Supplier commits a material breach of the Contract which is not remedied within 14 (fourteen) days of receiving written notice of such breach;

19.1.3 the Supplier has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 (thirty) days after the Customer has given notification that the payment is overdue; or

19.1.4 any consent, licence or authorisation held by the Supplier is revoked or modified such that the Supplier is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled;

19.1.5 any clause, term or condition that in the opinion of the Customer so warrants that termination notice should be served to the Supplier immediately as to protect the reputation, integrity or business interests of the Customer.

19.2 The Customer may terminate the Contract at any time by giving notice in writing to the Supplier if the Supplier:

19.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;

19.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Customer reasonably believes that to be the case;

19.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;

19.2.4 becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;



- 19.2.5 becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
  - 19.2.6 becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
  - 19.2.7 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
  - 19.2.8 has a resolution passed for its winding up;
  - 19.2.9 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
  - 19.2.10 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within 7 (seven) days of that procedure being commenced;
  - 19.2.11 has a freezing order made against it;
  - 19.2.12 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items;
  - 19.2.13 is subject to any events or circumstances analogous to those in clauses 19.2.1 to 19.2.12 in any jurisdiction;
  - 19.2.14 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 19.2.1 to 19.2.13 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 19.3 The Customer may terminate the Contract at any time by giving not less than 4 (four) weeks' notice in writing to the Supplier if the Supplier undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.
  - 19.4 The right of the Customer to terminate the Contract pursuant to clause 19.2 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to the Contract.
  - 19.5 If the Supplier becomes aware that any event has occurred, or circumstances exist, which may entitle the Customer to terminate the Contract under this clause 19, it shall immediately notify the Customer in writing.
  - 19.6 The Customer may terminate the Contract for convenience without reason, prejudice, malice or obligation to state a reason (regardless of whether a dispute has or would have occurred within the context of clause 36,) by giving not less than 4 (four) weeks' notice in writing to the Supplier regardless any termination terms that the Supplier may have, and such notice shall not have any obligation, consequence or effect any rights to the detriment of the Customer in relation to clauses 14.2, 14.3 and 14.4.
  - 19.7 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Customer at any time up to the date of termination.

## **20 Notices**

20.1 Any notice or other communication given by a party under these Conditions shall:

20.1.1 be in writing and in English;

20.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and

20.1.3 be sent to the relevant party at the address set out in the Contract or as notified by either party from time to time.

20.2 Notices may be given, and are deemed received:

20.2.1 by hand: on receipt of a signature at the time of delivery;

20.2.2 by Royal Mail (or equivalent bona fide courier) Recorded Signed For post: at 9.00 am on the second Business Day after posting;

20.2.3 by Royal Mail (or equivalent bona fide courier) International Tracked & Signed post: at 9.00 am on the fourth Business Day after posting; or

20.2.4 by email or any other electronic means providing such means can be independently verified, audited and/or validated confirming date and time stamp of transmission and receipt between the parties.

20.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 20.1 and shall be effective:

20.3.1 on the date specified in the notice as being the date of such change; or

20.3.2 if no date is so specified, 5 (five) Business Days after the notice is deemed to be received.

20.4 All references to time are to the local time at the place of deemed receipt.

20.5 This clause does not apply to notices given in legal proceedings or arbitration.

20.6 Notwithstanding clause 20.5, a notice given under these Conditions is considered to be validly served if sent by email or any other electronic means provided such notice conforms to clause 20.2.4.

## **21 Cumulative remedies**

The rights and remedies provided in the Contract for the Customer only are cumulative and not exclusive of any rights and remedies provided by law.

## **22 Time**

Unless stated otherwise, and in conjunction with clause 6.7, time is of the essence for any date or period specified in the Contract in relation to the Supplier's obligations only, unless a permitted deviation to this clause has specifically been agreed in writing with the Customer prior to such a deviation event occurring or likely to occur.

## **23 Further assurance**

The Supplier shall at the request of the Customer, and at the Supplier's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

## **24 Entire agreement**

24.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

24.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. The Supplier shall not have any claim against the Customer for innocent or negligent misrepresentation on the basis of any statement in the Contract.

24.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

## **25 Variation**

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, each party.

## **26 Assignment**

26.1 The Supplier may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Customer's prior written consent, which it may withhold or delay at its absolute discretion.

26.2 Notwithstanding clause 26.1, the Supplier may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives the Customer prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Supplier acknowledges and agrees that any act or omission of its Affiliate in relation to the Supplier's rights or obligations under the Contract shall be deemed to be an act or omission of the Supplier itself.

## **27 Set off**

27.1 The Customer shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Supplier under the Contract or under any other contract which the Customer has with the Supplier.

27.2 The Supplier shall pay all sums that it owes to the Customer under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

## **28 No partnership or agency**

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

## **29 Equitable relief**

The Supplier recognises that any breach or threatened breach of the Contract may cause the Customer irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Customer, the Supplier acknowledges and agrees that the Customer is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

## **30 Severance**

- 30.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.
- 30.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

## **31 Waiver**

- 31.1 No failure, delay or omission by the Customer in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 31.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Customer shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Customer.
- 31.3 A waiver of any term, provision, condition or breach of the Contract by the Customer shall only be effective if given in writing by the Customer, and then only in the instance and for the purpose for which it is given.

## **32 Compliance with law**

The Supplier shall comply with Applicable Law and shall maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

## **33 Conflicts within contract**

If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail to the extent of the conflict.

## **34 Costs and expenses**

The Supplier shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

### **35 Third party rights**

- 35.1 Except as expressly provided for in clause 35.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
- 35.2 Any Affiliate of the Customer shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

### **36 Dispute resolution**

- 36.1 Notwithstanding the Customers rights under clause 19.6, which may be invoked by the Customer at any time before, during or after any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 36.
- 36.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 36.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedure:
- 36.3.1 Within 10 (ten) Business Days of service of the notice, the prima facie contract managers of each of the parties shall meet to discuss the dispute and attempt to resolve it.
- 36.3.2 If the dispute has not been resolved within 20 (twenty) Business Days of the first meeting of the contract managers, then the matter shall be referred to the next level or director level or chief operating officer (or persons of equivalent seniority) of each of the parties. The next level et al shall meet within 10 (ten) Business Days to discuss the dispute and attempt to resolve it.
- 36.4 Until the parties have completed the steps referred to in clause 36.3, and have failed to resolve the dispute, neither party shall commence formal legal proceedings except that either party may at any time seek urgent interim relief from the courts.

### **37 Governing law**

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

### **38 Jurisdiction**

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

## **Appendix A**

### **Supplemental/Additional Customer terms or conditions or policies**

#### **1 PUBLICITY**

- 1.1 The Supplier shall not make any press announcements or publicise this Contract in any way without prior written consent from the Customer.
- 1.2 The Customer shall be entitled to publicise this Contract in accordance with any legal obligation upon the Customer or where Customer has obtained written consent from the Supplier.
- 1.3 The Supplier shall not do anything, or cause anything to be done, which may damage the reputation of the Customer.

#### **2. TUPE**

- 2.1 The parties do not intend that the provision of any services would apply to the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE").
- 2.2 In the event that TUPE does or is alleged to apply to the provision of such services, then the Supplier warrants that it shall indemnify the Customer against all direct losses, redundancy costs (including, without limitation, contractual and statutory redundancy payments and payments in lieu of notice), liabilities, damages, compensation, claims, costs and expenses including redundancy costs, fines, penalties, legal and other professional fees and expenses ("Losses") which the Customer may suffer or incur on account of or arising from any claim or allegation by any employee representative or any person who is or was employed or engaged by the Supplier (including without limitation all Losses which the Customer may suffer or incur arising from the employment and/or termination of employment of any person whose contract of employment transfers or is alleged to transfer under TUPE) or any other party under TUPE).

#### **3. FOIA**

- 3.1 The Supplier acknowledges that the Customer may occasionally be subject to the requirements of FOIA and will:
  - (a) provide all necessary assistance and co-operation as reasonably requested by UKATC to enable UKATC to comply with its obligations under FOIA in relation to any Requests for Information relating to this Contract;
  - (b) transfer to UKATC all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 (two) Business Days of receipt;
  - (c) provide UKATC with a copy of all Information belonging to UKATC requested in the Request for Information which is in its possession or control in the form that UKATC requires within 5 (five) Business Days (or such other period as UKATC may reasonably specify) of UKATC 's request for such Information; and
  - (d) not respond directly to a Request for Information unless authorised in writing to do so by UKATC.
- 3.2 UKATC will be responsible for determining, in its absolute discretion, whether any Information:
  - (a) is exempt from disclosure in accordance with the provisions of FOIA;

- (b) is to be disclosed in response to a Request for Information,
- 3.3 The Supplier acknowledges that UKATC may be obliged under the FOIA to disclose Information that is commercially sensitive:
  - (a) without consulting with the Supplier, or
  - (b) following consultation with the Supplier and having taken its views into account.
- 3.4 Where such obligations applies UKATC will, in accordance with any recommendations issued under any code of practice issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advanced notice, or, failing that, to draw the disclosure to the Supplier's attention as soon as practicable after any such disclosure.
- 3.5 Where the Supplier is subject to the requirements of the FOIA too, UKATC will assist and co-operate with the Supplier to enable the Supplier to comply with its obligations under the FOIA in relation to any Requests for Information received by the Supplier relating to any Contract in existence.