



PURCHASE ORDER TERMS FOR THE SUPPLY OF GOODS AND/OR SERVICES

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RECITALS:

- (A) The Supplier is engaged in the business of offering the Goods and/or Services and has considerable skill, knowledge and experience in that field.
- (B) In reliance on that skill, knowledge and experience, the Company wishes to engage the Supplier to provide the Goods and/or Services and the Supplier has agreed to provide the Goods and/or Services in accordance with the provisions of the Agreement.

1 AGREEMENT

- 1.1 These PO Terms shall govern and be incorporated into every contract for the supply of Goods and/or Services made by or on behalf of the Company with the Supplier, including all Purchase Orders, save where the Company and the Supplier have expressly agreed in writing signed by each Party that their contract shall be governed by alternative terms and conditions.
- 1.2 These PO Terms 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 Company.

2 DEFINITIONS AND INTERPRETATION

- 2.1 The definitions and rules of interpretation below apply in these PO Terms.
- ADR Notice** means a notice in writing served under the alternative dispute resolution procedure set out at Clause 40 (Dispute Resolution);
- Agreement** means, together, these PO Terms and any applicable Purchase Order;
- Background IPR** means any and all Intellectual Property Rights that are owned by or licensed to either Party and which are or have been developed independently of the Agreement (whether prior to the Effective Date or otherwise);
- Bribery Act** means the Bribery Act 2010;
- Business Day** means a day, excluding a Saturday or a Sunday, on which banks in London are open for non-automated business;
- CEDR** means the Centre for Effective Dispute Resolution;
- Change** means any change to the Agreement including the addition to, or variation of, any of the Goods and/or Services;
- Charges** means the charges for the Goods and/or Services as described in the Purchase Order;
- Company** means Affinity Water Limited, a company incorporated in England and Wales with company number 02546950, whose registered office is situated at Tamblin Way, Hatfield, Hertfordshire AL10 9EZ;
- Company's Group** means the Company, any subsidiary or any holding company from time to time of the Company, and any subsidiary or holding company from time to time of the Company's holding company. Each company in the Company's Group is a "member of the Company's Group";
- Company's Policies** means the Company's business policies as amended from time to time, copies of which may be provided to the Supplier on request;
- Company Premises** means those premises or land on which the Company or any member of the Company's Group conducts its business (either directly or through Company Service Providers) whether owned by the Company or not and where the Goods and/or Services are to be performed or delivered;
- Company Service Providers** means any service providers, contractors or other third parties who are engaged by the Company or any other member of the Company's Group to provide, operate or otherwise manage services or develop materials but excluding the Supplier;
- Confidential Information** means:
- (a) information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party that relates to:
- (i) the Disclosing Party; or
- (ii) its operations, business, affairs, developments, Intellectual Property Rights, trade secrets, know-how, customers and/or personnel;
- (b) other information provided by the Disclosing Party (including Issued Property) that ought reasonably to be considered to be confidential which comes (or has come) to the Receiving Party's attention or into its possession;
- (c) discussions, negotiations and correspondence between the Disclosing Party or any of its consultants or professional advisers and the Receiving Party or any of its consultants and professional advisers in connection with the Agreement; and
- (d) information derived from any of the above (including any copies of such information);

Contract Manager means:

- (a) for the Company: the person appointed by the Company to act as contract manager on behalf of the Company; and
- (b) for the Supplier: the person appointed by the Supplier to act as contract manager on behalf of the Supplier,
- (c) as notified by the relevant Party to the other from time to time;

Control has the meaning given to that term in Section 1124 of the Corporation Act 2010;

Data Protection Legislation means, for the periods for which they are in force, the Data Protection Act 2018, the GDPR, all laws giving effect or purporting to give effect to the GDPR or otherwise relating to data protection, including the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, in each case as amended or substituted from time to time;

Data Subject shall have the meaning given in the Data Protection Legislation;

Deliverables means all items created and/or delivered and/or provided and/or arising out of the provision of the Services to the Company by or on behalf of the Supplier under the Agreement;

Disclosing Party means a Party that makes a disclosure of Confidential Information to another Party;

Dispute means any dispute, conflict or disagreement arising out of or in connection with the Agreement;

Effective Date means the order date as set out in the Purchase Order;

Expiry Date means the delivery date as set out in the Purchase Order;

Environmental Information Regulations means the Environmental Information Regulations 2004 and any guidance and/or codes or practice issued by the Information Commissioner or relevant government department in relation to such regulations;

Force Majeure Event shall be limited to one or more of the following events:

- (a) war, civil war, armed conflict or terrorist attack arising within and affecting the United Kingdom;
- (b) nuclear, chemical or biological contamination; and/or
- (c) pressure waves caused by aircraft or other aerial devices travelling at supersonic speeds;

Foreground IPR means the Intellectual Property Rights:

- (a) in any Goods and/or Deliverables designed, created or otherwise developed by or for the Company and/or a member of the Company's Group, or jointly developed by the Parties, pursuant to the Agreement;
- (b) created or developed in the course of providing the Goods and/or Services under the Agreement; and
- (c) in any software (including, without limitation, all source code, documentation and preparatory designs) specifically developed or written by the Supplier or its Sub-contractors for the Company or any member of the Company's Group in connection with the Agreement;

GDPR means:

- (a) the General Data Protection Regulation (Regulation (EU) 2016/679); or
- (b) any equivalent legislation amending, supplementing or replacing the General Data Protection Regulation (Regulation (EU) 2016/679);

Good Industry Practice means all relevant practices and professional standards that would be expected of a well-managed, expert provider performing services substantially similar to the Services and/or goods substantially similar to the Goods to customers of a substantially similar size and nature as the Company;

Goods means the goods to be provided by the Supplier as described in the Purchase Order;

Group means the Company's Group or the Supplier's Group, as appropriate;

Insolvency Event means where a Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the Court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

Intellectual Property Right means any and all intellectual property rights of any nature anywhere in the world whether registered, registrable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and

any other intellectual property rights which subsist in computer software, computer programs, websites, including the "look and feel" of any websites;

Issued Property means any property made available to the Supplier by or on behalf of the Company to be used in the provision of the Goods and/or Services including, without limitation, any specifications, drawings, samples, documents, software, data and information (and any associated Intellectual Property Rights);

Law means all laws, regulations, regulatory policies, guidelines or industry codes that apply to the Parties including those relating to the provision of the Goods and/or Services;

Notice means any notice or communication given to a Party under or in connection with Clauses 10 (Employees), 15 (Intellectual Property Rights), 16 (Data Protection), 18 (Indemnities), 19 (Insurance and Notice of Incidents), 20 (Termination), 24 (Force Majeure), 29 (Variation), 30 (Assignment and Transfer) and 38 (Dispute Resolution);

Party means each of the Company and the Supplier, as applicable, being a party to the Agreement;

Personal Data means the personal data (as defined in the Data Protection Legislation) which relates to or originates from the Company, the Company's Group, any Company Service Provider or any of the Company's employees, contractors or customers and which is processed by or on behalf of the Supplier under the Agreement;

Personal Data Breach shall have the meaning given in the Data Protection Legislation;

PO Terms means the Company's standard terms and conditions of purchase set out in this document;

Purchase Order means the Company's order for the supply of Goods and/or Services, as set out in the Company's purchase order form;

Receiving Party means a Party to which a disclosure of Confidential Information is made by another Party;

Representative means any of a Party's employees, officers, agents, contractors, representatives or advisers;

Request for Information shall have the meaning given under section 8 of the Freedom of Information Act 2000 and any corresponding meaning in respect of any request for "environmental information" contained in the Environmental Information Regulations (as appropriate);

Services means the services to be provided by the Supplier as described in the Purchase Order and any ancillary or incidental services to such services or such other services as may otherwise be required under the Agreement including, without limitation the supply of the Deliverables;

Staff means the Supplier's (and/or any Sub-contractors') directors, officers, employees, staff, agents, consultants or other persons who are engaged in the provision of the Goods and/or Services or the performance of the Supplier's obligations under the Agreement from time to time;

Staffing Information means in relation to the Staff, such information as the Company (for itself or on behalf of a Successor) may reasonably request, including:

- (a) their age, gender, length of service, job title and grade;
- (b) the identity of any employees;
- (c) their remuneration (including salary, profit sharing, incentive or bonus arrangements);
- (d) details of other applicable employment-related benefits (including medical insurance, life assurance, permanent health insurance schemes, pension, share option schemes and car schemes);
- (e) their terms of employment, relevant notice periods, post-termination restrictions and any terms relating to termination of employment or engagement, including any redundancy procedures or contractual redundancy payment schemes;
- (f) details of any individuals on long-term sickness absence, maternity or other statutory leave or otherwise absent from work;
- (g) any collective or recognition agreements applicable to them;
- (h) any claims brought against their employer within the previous two (2) years; or that their employer has reasonable ground to believe they might bring against their employer;
- (i) any disciplinary proceedings taken against them within the previous two (2) years;
- (j) any grievances raised by them within the previous two (2) years; and
- (k) such other information as may reasonably be requested including information relating to the working arrangements of that person and the proportion of time that a person spends working in connection with the Services (or some of them);

Sub-contractor means those persons, other than the Staff, who are employed or engaged by the Supplier to carry out partial or total performance of the Agreement in accordance with Clause 31;

Successor means a person who provides the Company with services the same or similar to the Services (or any part of the Services) and/or goods the same or similar to the Goods (or any part of the Goods) in succession

to the Supplier whether following termination of the Agreement or otherwise;

Supplier means the person or company to whom the Company issues a Purchase Order;

Supplier Premises means premises in the possession or control of the Supplier or any Sub-contractor (which are not Company Premises) from which the Goods and/or Services are delivered in whole or in part or otherwise relate to the provision of the Goods and/or Services;

Supplier's Group means the Supplier, any subsidiary or holding company from time to time of the Supplier, and any subsidiary from time to time of the Supplier's holding company. Each company in the Supplier's Group is a "member of the Supplier's Group";

Supplier's Registered Office means the Supplier's registered office to which all communications and notices may be addressed;

Tax means any tax, levy, import duty or other charge or withholding of a similar nature (including any related penalty or interest);

Tax Deduction means a deduction or withholding for or on account of Tax from a payment by one Party to another under the Agreement;

Term shall have the meaning given in Clause 3; and

Virus means any computer code, programming instruction or set of instructions that is intentionally and specifically constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or hardware without the consent or intent of the computer user. This definition includes, but is not limited to, self-propagating programming instructions commonly called viruses, trojans or worms.

- 2.2 Clause headings are for ease of reference only and do not form part of or affect the meaning, interpretation or construction of these PO Terms.
- 2.3 References to the singular include the plural (and vice versa), references to one gender include all genders and words denoting persons include individuals, bodies corporate, partnerships, unincorporated associations and other bodies.
- 2.4 Reference to any Law shall be construed to include a reference to that Law as from time to time amended, extended, re-enacted or consolidated and any subordinate legislation made pursuant to that Law.
- 2.5 References to Clauses are to clauses of these PO Terms; and a reference to a Clause number is, unless otherwise specified, a reference to all its sub-clauses.
- 2.6 In these PO Terms, the words "other", "includes", "including" and "in particular" do not limit the generality of any preceding words and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.
- 2.7 A reference to a "holding company" or a "subsidiary" means (as the case may be) as defined in section 1159 of the Companies Act 2006.
- 2.8 Where any Sub-contractor appointment has been approved by the Company in accordance with these PO Terms, references to the Supplier shall include any Sub-contractor.

3 TERM

The Agreement shall take effect on the Effective Date and subject to Clause 20 shall continue in force until the Expiry Date.

4 PERFORMANCE OF THE AGREEMENT

During the Term, the Supplier shall supply and the Company shall receive the Goods and/or Services in accordance with the Agreement including, without limitation, the warranties, representations and undertakings set out in Clause 5 (Warranties and Representations).

5 WARRANTIES AND REPRESENTATIONS

5.1 The Supplier warrants, represents and undertakes, in favour of each member of the Company's Group, as follows:

- (a) the Supplier shall provide the Goods and/or Services:
 - (i) in accordance with all applicable Laws (including all those relating to health and safety and the Modern Slavery Act 2015), the Company's Policies and Good Industry Practice;
 - (ii) in accordance with the requirements and timescales specified in the Purchase Order;
 - (iii) in co-ordination and cooperation with the Company and any Company Service Providers and in a manner so as to minimise disruption to the Company's business;
 - (iv) without prejudice to Clause 5.1(a)(i), in a manner which is not, and is not likely to become, injurious to health or detrimental to the environment or to any property at any Company Premises to which the Supplier has access in order to provide the Goods and/or Services; and
 - (v) in a manner that does not damage the public image and reputation of the Company;
- (b) the Supplier has full power and authority to enter into the Agreement and to supply the Goods and/or Services, and the

- Agreement has been entered into by the Supplier's duly authorised representative and is binding and enforceable against the Supplier;
- (c) the Supplier has full clear and unencumbered title in respect of the Goods and/or Deliverables and at the date of delivery it will have full and unrestricted rights to sell and transfer all such items to the Company;
- (d) the performance of the Supplier's obligations under the Agreement and the Company's use, in accordance with the Agreement, of the Goods and/or Services or Deliverables and/or any licences granted by the Supplier to the Company to use or otherwise deal with any Goods and/or Services or Deliverables and any Intellectual Property Rights therein, shall not:
- (i) be unlawful or illegal; or
- (ii) inhibit, restrict or impair the free and/or unrestricted exercise by the Company of the rights granted under the Agreement;
- (e) there are no actions, suits, proceedings or regulatory investigations pending or threatened against, or affecting, the Supplier before any court or administrative body or arbitration tribunal that might affect the Supplier's ability to meet and carry out its obligations under the Agreement;
- (f) the Supplier does not have, and will continue not to have, any actual or reasonably perceived conflict of interest with the Company or any of the Company's personnel, save where notified to and approved in writing by the Company in advance;
- (g) the Supplier has, and will continue to have, all necessary rights in and to all hardware, software, materials and facilities used to provide the Goods and/or Services to the Company and such hardware, software, materials and facilities shall be used and maintained and perform in accordance with the relevant manufacturer's or supplier's technical specifications; and
- (h) all software comprised in any Goods and/or Services (including Deliverables) will be checked with an up-to-date virus checker immediately prior to its delivery and the Supplier will take all other steps in accordance with Good Industry Practice to ensure that no Viruses are introduced into such software, or into any of the Company's hardware, software or other information technology equipment or platforms by an act or omission of the Supplier.
- 5.2 Except as otherwise specified in the Agreement, the Supplier will determine and will, without making any additional charge, be responsible for providing all consents (whether regulatory, governmental or otherwise), licences and other materials necessary to provide the Goods and/or Services.
- 5.3 The Supplier acknowledges that the Supplier has been appointed by the Company on a non-exclusive basis to provide the Goods and/or Services, and that the Company may procure (on its behalf or on behalf of any member of the Company's Group) the Goods and/or Services from any other person or provide them itself.
- 6 SUPPLIER CONDUCT**
- 6.1 The Supplier will notify the Company as soon as it becomes aware of:
- (a) any health and safety hazards or issues which arise in connection with the performance of the Agreement; and
- (b) any breach of any Company Policies.
- 6.2 The Company grants the Supplier permission to use that part of Company Premises as may from time to time be designated for the supply of the Goods and/or Services solely for the purposes of providing the Goods and/or Services to the Company. In granting the permission in this Clause 6.2, the Parties understand that no form of lease or relationship of landlord and tenant is created, or is intended to be created.
- 6.3 The Supplier shall implement due diligence procedures in accordance with Good Industry Practice on its own suppliers, Sub-contractors and any other participants in its supply chains, to ensure that its supply chains do not involve any slavery or human trafficking or any evidence of systemic or repeated non-compliance with Laws relating to health and safety.
- 7 SUPPLY OF THE GOODS AND/OR SERVICES**
- 7.1 To the extent that the Supplier is providing Goods under the Agreement;
- (a) the Supplier shall deliver the Goods on the date specified in the Purchase Order at the specified Company Premises and during the Company's normal hours of business, or as instructed by the Company in writing;
- (b) Goods shall be delivered with a note identifying:
- (i) the relevant Purchase Order number or other agreed order reference;
- (ii) the delivery date;
- (iii) the type and quantity of the Goods; and
- (iv) any warning labels, special handling or storage instructions; and
- (c) in the event the Company requests any additional documentation this shall be provided within ten (10) Business Days of the request.
- 7.2 To the extent that the Supplier is providing Goods and/or Deliverables under the Agreement:
- (a) the Company shall have the right to inspect and test the Goods and/or Deliverables at any time before, during or after delivery. The Supplier shall undertake, or assist the Company in undertaking, any testing agreed by the Parties in writing, to the Company's satisfaction. The Supplier shall provide a certificate of conformity on delivery of the Goods and/or Deliverables;
- (b) if following inspection and/or testing in accordance with Clause 7.2(a) the Company considers that the Goods and/or Deliverables do not comply with the provisions of the Agreement, the Company shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance. Failure by the Supplier to achieve compliance within a reasonable period of time from notification by the Company shall entitle the Company to reject all or part of the Goods and/or Deliverables, regardless of whether title has passed;
- (c) Goods and/or Deliverables shall only be deemed to have been accepted on the earlier of:
- (i) the date the Company sends to the Supplier written notice of acceptance;
- (ii) the date thirty (30) calendar days after successful completion of any agreed testing (if applicable);
- (iii) the date thirty (30) calendar days after the receipt by the Company of a certificate of conformity; or
- (iv) if none of 7.2(i)-(iii) apply, 30 calendar days after delivery; unless the Company has previously notified the Supplier of non-compliance. For the avoidance of doubt, payment of any amounts by the Company shall not signify acceptance of Goods and/or Deliverables and acceptance of any Goods and/or Deliverables which are non-compliant shall be without prejudice to any rights of the Company including any warranties or remedies, and shall not mean that the Goods and/or Deliverables have been deemed to be compliant; and
- (d) risk in any rejected Goods and/or Deliverables shall return to the Supplier and any costs in handling, storage, collection or return of the Goods and/or Deliverables shall be payable by the Supplier.
- 7.3 To the extent that the Supplier is providing Goods, Services and/or Deliverables under the Agreement:
- (a) the Supplier shall not deliver the Goods, Services and/or Deliverables in instalments unless specified in the Purchase Order and time shall be of the essence for delivery of the Goods, Services and/or Deliverables. The Supplier shall be liable for any loss suffered by the Company as a result of late delivery;
- (b) if the Supplier fails to provide the Goods, Services and/or Deliverables in accordance with the Agreement then, without prejudice to the Company's other rights and remedies at Law or under the Agreement (and notwithstanding any action taken or to be taken under Clause 7.3(c)), the Supplier shall promptly at no additional cost:
- (i) report to the Company's Contract Manager such failure (including any events or circumstances which may adversely affect or delay its performance in whole or in part), identify the cause of the failure and the actual level of performance it will be able to achieve;
- (ii) take whatever action is reasonably necessary to minimise the impact of that failure and prevent it from recurring;
- (iii) correct the failure if it is a failure that can be corrected immediately or, if not, put forward a rectification programme which sets out in reasonable detail the measures the Supplier will adopt to remedy the failure and the timetable for implementation of those measures and rectification of the failure; and
- (iv) keep the Company informed of the status of any actions taken under Clauses 7.3(b)(ii) and 7.3(b)(iii) above;
- (c) if the Supplier fails to provide the Goods, Services and/or Deliverables in accordance with the Agreement then, without prejudice to the Company's other rights and remedies at Law or under the Agreement (and notwithstanding any action taken or to be taken under Clause 7.3(b)) and whether or not the Company has accepted the Goods, Services and/or Deliverables, the Company may, at its sole option:
- (i) require the Supplier, at the Supplier's expense, to carry out any additional work as is necessary to correct the Supplier's failure (including repair and/or replacement where relating to Goods and/or Deliverables);
- (ii) refuse to accept any further Goods, Services and/or Deliverables from the Supplier. In such case, the Supplier shall refund to the Company all sums of money paid to the

- Supplier in respect of such Goods, Services and/or Deliverables without set off or counterclaim;
- (iii) demand a refund from the Supplier in respect of any Goods and/or Deliverables for which the Company has made payment and which have been rejected in accordance with Clause 7.2(b), without set off or counterclaim and Supplier shall pay such refund within ten (10) Business Days of receipt of the demand;
- (iv) accept the Goods, Services and/or Deliverables, subject to an appropriate reduction in the Charges agreed between the Parties (in which case such reduced amount shall apply);
- (v) terminate the Agreement in respect of all or any part of the Goods, Services and/or Deliverables, in which case no further amounts shall be due or payable by the Company in respect of such Goods, Services and/or Deliverables and the Supplier shall refund to the Company all amounts paid to the Supplier in respect of the Goods, Services and/or Deliverables; and/or
- (vi) claim damages for any costs, expenses or losses resulting from the Supplier's supply of the Goods, Services and/or Deliverables that are not in conformity with the terms of the Agreement including, for the avoidance of doubt, the costs of the Company obtaining replacement Goods, Services and/or Deliverables from a third party.
- 7.4 The terms of the Agreement shall extend to any substituted or remedied goods and/or services supplied by the Supplier pursuant to this Clause 7.
- 7.5 If the Supplier fails to promptly comply with any obligations pursuant to Clause 7, the Company may, without affecting its rights under Clause 7.3(c)(vi), obtain substitutes for the Goods and/or Services from a third party supplier and the Supplier shall reimburse the Company for the costs it incurs in doing so.
- 8 RISK IN MATERIALS**
- 8.1 All plant, materials, apparatus, tools and property used or provided by the Supplier for the provision of the Goods and/or Services or any part thereof shall at all times be at the Supplier's sole risk.
- 8.2 Any Issued Property will be at the Supplier's risk while in the Supplier's possession and/or control. The Company shall retain title to Issued Property at all times.
- 9 CHARGES AND PAYMENT**
- 9.1 In consideration of the Supplier's supply of the Goods and/or Services, the Company (or any member of the Company's Group) shall pay the Supplier the Charges in accordance with the terms of this Clause 9.
- 9.2 Unless expressly agreed otherwise by the Company in writing:
- (a) the Charges shall be payable by the Company to the Supplier in pounds sterling;
- (b) the Supplier shall submit invoices to the address specified in the Purchase Order in accordance with Clause 9.5;
- (c) invoices submitted by the Supplier shall:
- (i) specify a valid Purchase Order number or other agreed order reference for the Goods and/or Services being invoiced;
- (ii) clearly reference the Supplier;
- (iii) include a copy of any applicable delivery note(s); and
- (iv) contain a sufficiently detailed description of the Goods and/or Services to which the invoice relates as to allow the Company to be able to identify them; and
- (d) undisputed and valid invoices are due for payment by the Company within thirty (30) calendar days following the end of the month in which the undisputed and valid invoice is received.
- 9.3 Payments shall be deemed to have been made by the Company on the date that the payment leaves the Company's bank account.
- 9.4 If the Company disputes, in good faith, all or part of any invoice received from the Supplier, the Company shall notify the Supplier in writing of such dispute as soon as reasonably practicable. Within five (5) Business Days of receiving notice of a dispute under this Clause 9.4 the Supplier shall re-issue an invoice for the undisputed amount and the earlier invoice shall cease to be payable. Either Party may refer any disputed sums for resolution in accordance with the provisions of Clause 38 (Dispute Resolution). On resolution of the dispute, the Supplier may invoice any amounts agreed by the Parties (or otherwise determined) to be due. The Supplier shall provide the Company with any further information reasonably requested by the Company in connection with any invoice which the Company disputes. Any invoices issued or re-issued pursuant to this Clause 9.4 shall be payable in accordance with the provisions of Clause 9.2.
- 9.5 The Supplier shall ensure that all Charges for all Goods and/or Services provided are invoiced within thirty (30) calendar days of provision of the relevant Goods and/or Services. The Supplier may not, and waives all right to, demand payment of any Charges not invoiced within that period.
- 9.6 Each Party shall be entitled to receive interest on any undisputed payment not made when properly due pursuant to the terms of the Agreement, calculated from day to day at a rate per annum equal to two per cent (2%) above the Base Lending Rate of the Bank of England. Such interest shall be payable from the date which is fourteen (14) calendar days after the relevant Party receives notice from the other that payment is overdue up to and including the date of payment. The Parties agree that the right to claim interest under this Clause 9.6 is a substantial remedy for late payment and is in substitution for any statutory or other right to claim interest and/or other remedy for late payment under the Late Payment of Commercial Debts (Interest) Act 1998.
- 9.7 All Charges and payments to be made by the Company to the Supplier in respect of Goods and/or Services supplied by the Supplier to the Company under the Agreement are stated exclusive of any applicable VAT, which shall be paid by the Company to the Supplier at the rate prescribed by Law from time to time subject to prior delivery by the Supplier to the Company of a valid VAT invoice in respect thereof.
- 9.8 Without prejudice to any other remedies which may be available to the Company, if the Supplier fails to provide the Goods and/or Services (or any part thereof) in accordance with the Agreement, the Company shall have the right to suspend payment of such of the Charges as it considers (acting reasonably) should be allocated to such Goods and/or Services ("**Relevant Charges**"), until the relevant Goods and/or Services have been properly provided, after which payment of such Relevant Charges shall (subject to any other rights of the Company to suspend or withhold payment) be payable to the Supplier in accordance with Clause 9.2(d).
- 9.9 Whenever under the Agreement, or any other contract to which the Company and the Supplier are a party, any amount is recoverable from or payable by the Supplier to the Company, the same may be recovered or deducted from any amount due (or which at any time thereafter may become due) to the Supplier under the Agreement, or such other contract. If any such amount is payable by the Supplier to the Company at the end of the Term, and there are no more invoices to be issued by the Supplier, the Company may issue an invoice for the relevant amount to the Supplier which the Supplier shall pay within twenty (20) Business Days of receipt of that invoice.
- 9.10 The Charges shall only be amended in accordance with Clause 29 of this Agreement and the Parties will specify in writing the date from which any revised Charges are to take effect.
- 9.11 If amendments to the Charges cannot be agreed in accordance with Clause 29 of this Agreement then the current Charges shall continue to apply and the matter shall be referred for resolution in accordance with Clause 38 of this Agreement.
- 9.12 Unless otherwise expressly agreed between the Parties in writing, the Charges and such other amounts expressed to be payable by the Company under this Agreement shall constitute the Company's entire payment liability to the Supplier under this Agreement.
- 10 EMPLOYEES**
- 10.1 The Supplier shall be responsible for the recruitment and training of sufficient Staff to provide the Goods and/or Services. To the extent permitted by Law, the Supplier shall conduct criminal record checks and any other reasonable background and security checks on Staff as shall be required by the Company before such Staff start work with the Supplier. The Supplier shall communicate the results of these checks to the Company on request.
- 10.2 At all times, the Supplier shall ensure that each member of Staff is suitably qualified, adequately trained, holds appropriate professional qualifications, and is capable of providing the applicable Goods and/or Services in respect of which they are engaged (including ensuring all Staff are fully conversant with the technologies being used by the Company and the Company's Policies and procedures that are relevant to their role). The Supplier shall ensure that Staff are informed of and adhere to the terms of the Agreement to the extent relevant.
- 10.3 The Company may refuse to grant access to, or require the removal from the Company's Premises of, any Staff who does not comply with the requirements of Clause 10.2 or who the Company otherwise believes in its sole discretion is unsuitable to be on the Company's Premises. Such decision by the Company shall not relieve the Supplier from its obligations under the Agreement.
- 10.4 If, for any reason, the Company reasonably considers that it is not in its interests for any Staff to be engaged in the provision of the Goods and/or Services, the Supplier shall replace such Staff with another person complying with the requirements of Clause 10.2.
- 10.5 The Supplier shall maintain up-to-date personnel records for the Staff and, within ten (10) Business Days of receiving a request from the Company, provide Staffing Information in relation to the Staff. The Supplier shall ensure at all times that it has the right to provide these records under Data Protection Legislation.

11 CONTRACT MANAGERS

- 11.1 Each Party shall notify the other Party in writing of any change in the identity of its Contract Manager during the course of the Agreement, provided that the Supplier must obtain the Company's prior written consent to the Supplier's proposed replacement Contract Manager.
- 11.2 Each Party's Contract Manager shall have the authority to exercise such rights, powers, discretions or options as the Party has under the Agreement and each Party shall ensure that its Contract Manager is available for consultation with the other Party's Contract Manager at all reasonable times.

12 CONFIDENTIALITY

- 12.1 Each Party shall:
- keep the Confidential Information secret and confidential;
 - not use or exploit the Confidential Information in any way except for the proper performance of its responsibilities under the Agreement;
 - not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance with the Agreement;
 - not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the proper performance of its responsibilities under the Agreement. Any such copies, reductions to writing and records shall be the property of the Disclosing Party; and
 - establish and maintain adequate security measures (including any reasonable security measures proposed by the Disclosing Party from time to time) to safeguard the Confidential Information from unauthorised access or use.
- 12.2 Either Party may disclose the Confidential Information to its Group, those of its Representatives engaged in the provision of the Goods and/or Services and any Company Service Providers or Sub-contractors only to the extent it is reasonably necessary for the performance of that Party's obligations under the Agreement or to receive the benefit of the Goods and/or Services and on the basis that it:
- informs the recipient of the confidential nature of the Confidential Information before it is disclosed;
 - procures that the recipient complies with the confidentiality obligations set out in this Clause 12 (including in the case of the Supplier where a recipient is not an employee or director of the Supplier, procuring that the recipient enters into a written confidentiality undertaking on substantially equivalent terms to the Agreement, a copy of which shall be provided to the Company); and
 - is at all times responsible and liable for the actions and omissions of the recipient in relation to the obligations set out in this Clause 12 as if they were the actions or omissions of that Party.
- 12.3 The provisions of Clause 12.1 shall not apply to:
- any information in the public domain or which subsequently enters the public domain otherwise than as a result of breach of any confidentiality obligation; or
 - information which was already in the possession of the recipient, or independently developed by the recipient, otherwise than as a result of a breach of any confidentiality obligation; or
 - information obtained from a third party who is under no confidentiality obligation with respect to the information; or
 - any information which is required to be used or disclosed by:
 - an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction;
 - the rules of any listing authority or stock exchange on which a Party's shares are listed or traded; or
 - Law.
- 12.4 On expiry or termination of the Agreement, or when requested by the Company, the Supplier shall, at its own cost, at the Company's option, either return or permanently destroy any records or copies in whatever form and/or irretrievably delete the same if stored on electronic or magnetic media of:
- any material containing Confidential Information belonging or relating to the Company or any member of the Company's Group (in machine readable form or otherwise); and
 - the Issued Property, and shall produce a signed undertaking confirming that it has complied with this obligation.
- 12.5 Notwithstanding Clause 12.4, the Supplier may retain documents and materials containing, reflecting, incorporating or based on the Company's Confidential Information to the extent required by Clause 23.1 or that the Supplier is required to retain by Law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction or the rules of any listing authority or stock exchange, to which it is subject. The provisions

of Clause 12 of these PO Terms shall continue to apply to any documents and materials retained by the Supplier pursuant to this Clause 12.5.

- 12.6 The Parties agree that damages may not be an adequate remedy for any breach of this Clause 12 and each Party shall be entitled to seek any legal and/or equitable relief, including an injunction, in the event of any breach of the provisions of this Clause 12 by the other Party in addition to its other remedies at Law, in equity and under the Agreement.
- 12.7 If a Party is required to make a disclosure of Confidential Information as contemplated by Clause 12.3(d) above, it shall only disclose the minimum Confidential Information required and shall, where lawful, consult with the other Party's Contract Manager prior to any such disclosure.

13 ENVIRONMENTAL INFORMATION REGULATIONS

- The Supplier shall ensure that its acts or omissions do not place the Company in breach of its obligations under the Environmental Information Regulations and shall:
 - procure that it, and any Sub-contractors, shall transfer to the Company all Requests for Information that it receives as soon as practicable and in any event within two (2) Business Days of receiving a Request for Information.
 - provide the Company with a copy of all information in its possession or power, in such form as the Company requires within five (5) Business Days (or such other period as the Company may specify) of the Company's request; and
 - provide all necessary assistance as reasonably requested by the Company to enable the Company to respond to the Request for Information within the time for compliance set out in the Environmental Information Regulations.
- 13.2 The Company shall be responsible for determining in its absolute discretion and notwithstanding any other provision of the Agreement, or any other agreement, whether any information is exempt from disclosure in accordance with the provisions of the Environmental Information Regulations.
- 13.3 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Company.
- 13.4 The Company shall take reasonable steps, where it is appropriate and legally permissible to do so, to give the Supplier advanced notice of any disclosure of information concerning the Supplier or the Goods and/or Services. Where such advanced notice is not possible, the Company shall take reasonable steps to draw the Supplier's attention to such disclosure after the disclosure has been made. However, the Supplier acknowledges that the Company may be obliged to disclose information under the Environmental Information Regulations without consulting the Supplier.

14 PUBLIC STATEMENTS

- 14.1 Except with the Company's prior written consent, the Supplier shall not make any public statement about the Agreement or in any way advertise or publicly announce that it is undertaking or has undertaken work for or provided the Goods and/or Services to the Company or any member of the Company's Group.

15 INTELLECTUAL PROPERTY RIGHTS

- 15.1 Each Party agrees and acknowledges that it shall not gain any right, title or interest in any of the other Party's Background IPR, except to the extent expressly licensed under the Agreement and shall make no representation to the contrary.
- 15.2 The Supplier hereby grants to the Company and each member of the Company's Group a royalty-free, non-exclusive, sub-licensable, transferable, perpetual, worldwide and irrevocable licence to any of the Supplier's Background IPR that is necessary or desirable for the Company and each member of the Company's Group to use and/or benefit from the Goods and/or Services and/or the Foreground IPR during the normal course of its business. On expiry or termination of the Agreement, the Supplier hereby agrees that, where the Supplier's Background IPR is necessary for the use of or to benefit from the Goods and/or Services and/or the Foreground IPR:
- the licence granted by the Supplier in this Clause 15.2 shall continue in full force and effect; and
 - the Company shall have the right to sub-licence such of the Supplier's Background IPR as is necessary to enable the Company or any member of the Company's Group to receive services, or to use goods substantially similar to the Goods and/or Services.
- 15.3 The Company hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable, non-sub-licensable, revocable licence during the Term to use any of the Company's Background IPR and the Foreground IPR solely to the extent necessary to provide the Goods and/or Services in accordance with the Agreement. The licence granted under this Clause 15.3 shall terminate on the earlier of the date on which the Supplier ceases to supply the Goods and/or Services or the end of the Term.

- 15.4 Any and all Foreground IPR shall, on creation of the rights, vest unconditionally in the Company. The Supplier hereby assigns to the Company absolutely (by way of present and, where appropriate, future assignment) with full title guarantee, and free from all encumbrances and third party rights, all right, title and interest, both legal and beneficial in and relating to such Foreground IPR throughout the world absolutely and for the full duration thereof, including all extensions and renewals.
- 15.5 The Supplier shall:
- (a) ensure and undertake to procure that all moral rights in the Foreground IPR are waived unconditionally and irrevocably and are not asserted;
 - (b) ensure that sufficient records are maintained to evidence the independent creation of the Foreground IPR; and
 - (c) unless otherwise agreed with the Company, ensure that any and all written agreements necessary for the Supplier to fully comply with its obligations at Clause 15.4 and any of its other obligations relating to Foreground IPR set out in the Agreement are entered into and, where relevant, adhered to by Staff.
- 15.6 The Supplier shall promptly return to the Company and/or destroy at the Company's option and instruction any items comprising the Company's Background IPR and/or the Foreground IPR and all copies thereof if requested to do so by the Company and in any event automatically on the expiry or termination of the Agreement.
- 15.7 The Supplier acknowledges that any breach of this Clause 15 or any act or omission by it which damages the reputation, image or prestige of the Company's Intellectual Property Rights may cause serious detriment to the Company.
- 15.8 If the use by the Company or any member of the Company's Group of any Goods, Services, Deliverables, the Supplier's Background IPR or the Foreground IPR is held by a court of competent jurisdiction to constitute an infringement of a third party's Intellectual Property Rights, or if the Company or any member of the Company's Group is advised by legal counsel that such use is likely to constitute such an infringement then (without prejudice to any of the Company's other rights and remedies under the Agreement or otherwise at Law or in equity) the Supplier shall, at its own expense, promptly and at the Company's option:
- (a) procure for the Company the right to continue using the Goods, Services and/or Deliverables in the manner provided for under the Agreement; or
 - (b) modify or replace the infringing part of the Goods, Services and/or Deliverables as soon as reasonably practicable so as to avoid the infringement or alleged infringement. Any modified or replacement Goods, Services and/or Deliverables provided under this Clause 15.8(b) shall comply with the requirements, warranties, representations and specifications set out in the Agreement.
- 16 DATA PROTECTION**
- 16.1 In this Clause 16, the terms, "processes", "data controller" and data processor" shall have the meanings given to them in the Data Protection Legislation.
- 16.2 The Parties acknowledge that for the purposes of Data Protection Legislation, the Company is the data controller and the Supplier is the data processor of any Personal Data.
- 16.3 The Supplier shall and shall procure that all of its Staff and Sub-contractors shall comply with all Data Protection Legislation in relation to any Personal Data processed.
- 16.4 Without limiting Clauses 16.2 and 16.3, the Supplier shall at all times, and shall ensure that its Staff shall at all times:
- (a) process Personal Data only in accordance with the Company's documented instructions and only during the Term. The Supplier shall immediately inform the Company if, in the Supplier's opinion, an instruction from the Company infringes the Data Protection Legislation or any other applicable Law;
 - (b) ensure that any person to whom it provides the Personal Data is subject to appropriate confidentiality obligations;
 - (c) disclose any Personal Data only on a need to know basis to Staff directly concerned with the provision of the Goods and/or Services;
 - (d) not transfer or direct the transfer of any Personal Data to any third party or process or direct the processing of Personal Data outside of the European Economic Area in each case without the Company's prior written consent (which consent may be subject to such conditions as the Company may stipulate);
 - (e) keep all Personal Data confidential, and have in place on a continuing basis all reasonable appropriate technical and organisational measures to keep all Personal Data confidential and secure and to protect it against unauthorised or unlawful processing, accidental loss, destruction, damage, alteration, disclosure or access;
 - (f) upon request by the Company, promptly do such other acts in relation to the Personal Data, or any part thereof, as the Company shall request to enable the Company to comply with its obligations under the Data Protection Legislation;
- (g) notify the Company promptly (and at least within two (2) Business Days) if it receives a request from a Data Subject, a complaint relating to a Data Subject or if it becomes aware of any Personal Data Breach and promptly provide the Company with all such data, information, cooperation and assistance as is required by the Company in order to (as applicable):
- (h) respond to and resolve the request or complaint; or
 - (i) notify the Personal Data Breach to the Information Commissioner and/or Data Subject(s) and otherwise fulfil its obligations under Data Protection Legislation within any applicable time frames;
 - (j) provide such information and cooperate with such audits, including inspections, conducted by the Company or an auditor mandated by the Company, as is reasonably necessary to enable the Company to satisfy itself of the Supplier's compliance with this Clause 16 and the Data Protection Legislation; and
 - (k) on termination or expiry of the Agreement, and at any other time on the Company's request, either return or destroy (at the Company's election) the Personal Data (including all copies of it) and confirm in writing that it has complied with this obligation.
- 17 LIMITATION OF LIABILITY**
- 17.1 Subject to Clauses 17.3 and 17.4, the Supplier's total liability to the Company and each member of the Company's Group arising out of or in connection with the Agreement whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, shall be limited during the Term to 200% of the Charges payable to the Supplier in the Term.
- 17.2 To the extent that the Supplier is entitled by reason of insurance, indemnity or otherwise to recover from a third party any sum in respect of liability, loss or damage which is the subject of a claim by the Company in respect of any breach of the Agreement (a "Recovered Sum"), such Recovered Sum shall not count towards the cap on liability in Clause 17.1 and the Company shall be entitled to claim such Recovered Sum from the Supplier in full.
- 17.3 Nothing in the Agreement excludes or limits the liability of either Party in respect of:
- (a) death or personal injury caused by its negligence (including negligence of its employees, agents, contractors or Sub-contractors);
 - (b) fraud and/or fraudulent misrepresentation or theft;
 - (c) any indemnity given by it under the Agreement;
 - (d) liability which may not otherwise be limited or excluded under applicable Law; or
 - (e) in the case of the Supplier, any liability of the Supplier pursuant to Clause 10.
- 17.4 Subject to Clause 17.3, neither Party will be liable to the other Party, whether in contract or tort (including negligence), breach of statutory duty or otherwise, for any indirect or consequential loss arising under or in connection with the Agreement.
- 17.5 Subject to Clauses 17.3 and 17.4, the Company's total liability to the Supplier arising out of or in connection with the Agreement whether arising in contract, tort (including negligence), breach of statutory duty or otherwise shall be limited during the Term to 100% of the Charges payable to the Supplier in the Term.
- 18 INDEMNITIES**
- 18.1 Notwithstanding any other provision of the Agreement, the Supplier shall on demand fully and effectively indemnify, keep indemnified, defend and hold harmless the Company and each member of the Company's Group and their respective directors, officers, agents, employees, successors and assigns from any and all losses, including all claims, expenses, damages, proceedings, costs, and other liabilities resulting from or in connection with:
- (a) death or personal injury arising from the Supplier's breach of the Agreement, breach of any Law or any negligent act or omission of the Supplier;
 - (b) the wilful abandonment by the Supplier of its obligations under the Agreement, its wilful misconduct or any fraudulent, dishonest or illegal act or omission by the Supplier, or the breach by the Supplier of any Law or any breach of obligations of the Supplier which causes or contributes to any breach of Law by any member of the Company's Group;
 - (c) any damage to property (including Issued Property, the Company Premises or property of a third party) through the acts or omissions of the Supplier;
 - (d) any breach of Clauses 12 (Confidentiality), 16 (Data Protection) and/or 22 (Corruption and Bribery) by the Supplier, its Staff or associated persons;

- (e) any claim that the Goods, Services, Deliverables (or use thereof) the Supplier's Background IPR, the Foreground IPR, any hardware, software, or other materials made available, licensed or used by the Supplier under or in connection with the Agreement infringes the Intellectual Property Rights or any other rights of any third party, or any infringement by the Supplier or its Staff of the Company's Intellectual Property Rights;
- (f) any Staff asserting that s/he is or was an employee or worker of the Company or any other member of the Company's Group, or which arises or is alleged to arise out of any act or omission of the Supplier and any liability for income tax, national insurance contributions and/or similar statutory payments (or penalties or interest thereon) which may be found due from the Company or any other member of the Company's Group in respect of any Staff; and
- and in Clauses 18.1(a) to 18.1(f), references to the Supplier include its Representatives, and Sub-contractors, together with all members of the Supplier's Group.
- 18.2 The Company shall notify the Supplier in writing as soon as reasonably practicable of any claims of which it has notice and, where the Supplier assumes conduct of the claim, the Company will not make any admissions without the Supplier's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed.
- 19 INSURANCE AND NOTICE OF INCIDENTS**
- 19.1 Without prejudice to the Company's other rights under the Agreement, the Supplier shall, during the Term, take out and maintain with reputable insurers such policies of insurance as may be necessary in accordance with Good Industry Practice to insure the Supplier against all manner of risks that might arise out of the acts or omissions of the Supplier or otherwise in connection with the Supplier's performance of its obligations under the Agreement, including, without limitation, in respect of the following risks:
- (a) employer's liability and any other related insurances required by Law with a minimum sum insured of £10,000,000 (ten million pounds sterling) in respect of any one occurrence;
- (b) professional indemnity insurance with a minimum sum insured of £10,000,000 (ten million pounds sterling) in respect of any one occurrence;
- (c) product liability cover with a minimum sum insured of £10,000,000 (ten million pounds sterling) in respect of any one occurrence; and
- (d) public liability insurance for a minimum sum insured of £10,000,000 (ten million pounds sterling) in respect of any one occurrence.
- 19.2 On request, the Supplier shall submit to the Company accurate details of its insurance cover, together with documentary evidence that such insurance remains properly maintained and in full force and effect (including, without limitation, any certificates of insurance the Company requires the Supplier to provide).
- 19.3 The Supplier shall:
- (a) not by its acts or omissions cause any insurance cover or policy to become void or voidable; and
- (b) immediately notify the Company in writing of any cancellation notice received from any insurer or of any material change in cover type or amount,
- provided that, nothing in this Clause 19 shall oblige the Supplier to breach any condition imposed by its insurers from time to time.
- 20 TERMINATION**
- 20.1 Without prejudice to any other right or remedy it may have whether under the Agreement, at Law or in equity, the Agreement may be terminated in whole or part by the Company on written notice to the Supplier, in the following situations:
- (a) in the case of a material breach (being a single event or series of events, taken together) which is not capable of remedy immediately, or if capable of remedy, if the Supplier fails to remedy that breach within ten (10) Business Days from the date of a notice requiring it to be remedied. For this purpose, a breach will be treated as capable of remedy if the Company can be put in the position it would have been in but for the breach;
- (b) immediately if the Supplier breaches any part of Clauses 5.1(a)(i) (Warranties and Representations), 12 (Confidentiality), 16 (Data protection) or 22 (Corruption and Bribery) or any licence granted to it in accordance with Clause 15 (Intellectual property rights);
- (c) at any time and for whatever reason in its sole discretion by giving the Supplier not less than three (3) months' written notice of its intention to do so;
- (d) immediately if there is a change in Control of the Supplier or its holding company or all or substantially all of the assets of the Supplier are transferred to a third party;
- (e) on ten (10) Business Days' written notice in the circumstances set out in Clause 24.3 (Force Majeure);
- (f) immediately if any default of the Supplier results in any regulatory body taking or threatening to take regulatory action against the Company or any member of the Company's Group (including, without limitation, the withdrawal of any licence or other authorisation) and the Supplier has not rectified that default within a reasonable time, or within the time stipulated in any notice from the regulatory authority;
- (g) on ten (10) Business Days' written notice if the Supplier does, or omits to do something, which will cause adverse publicity about the Company or any member of the Company's Group, or will weaken the public image and reputation of the Company or any member of the Company's Group; or
- (h) immediately if the Supplier is subject to an Insolvency Event. This Clause 20.1(h) shall also apply in the case of an Insolvency Event affecting any members of the Supplier's Group but only if the Insolvency Event will have a material effect on the ability of the Supplier to perform its obligations under the Agreement.
- 20.2 Without limiting its other rights or remedies, the Supplier may terminate the Agreement on written notice to the Company, where on more than three (3) occasions:
- (a) the Supplier has issued valid invoices for Charges which have become due in accordance with Clause 9; and
- (b) such invoices are not disputed by the Company; and
- (c) the Company has failed to pay such invoices, within thirty (30) calendar days from the date of written notice from the Supplier requiring payment,
- provided that such unpaid Charges must be greater than the total Charges payable under the Agreement in the previous four (4) calendar months.
- 20.3 If any term of the Agreement is declared ineffective in whole or part under the Utilities Contracts Regulations 2015, the Agreement shall be treated as terminated with immediate effect.
- 20.4 In addition to its rights to terminate the Agreement under this Clause 20, and without prejudice to any other of its rights or remedies or to any rights of action which shall accrue or shall have already accrued, the Company may, if any of the circumstances referred to in Clause 20.1 have occurred, take any one or more of the following steps:
- (a) suspend any payments due to the Supplier under the Agreement; or
- (b) without terminating the whole of the Agreement, terminate the Agreement in respect of part of the affected Goods and/or Services only (and a corresponding reduction in the Charges shall be made).
- 20.5 The Supplier shall promptly notify the Company of any event or circumstance that entitles or may in the future entitle the Company to exercise any of its rights under Clause 20.1.
- 21 EFFECT OF TERMINATION**
- 21.1 On expiry or termination of the Agreement the Supplier shall, as soon as reasonably practicable, return to the Company all property, information, materials, equipment and data in its possession or under its control that belongs to, or has been provided or made available by, or on behalf of, the Company and/or which relates to the Goods and/or Services, or to the Agreement.
- 21.2 Termination or expiry of the Agreement for any reason shall not affect any rights or liabilities that have accrued prior to such termination or expiry, or the coming into force or continuance in force of any term that is expressly or by implication intended to come into force or continue in force on or after termination or expiry.
- 21.3 Without prejudice to the generality of Clause 21.2, the following Clauses shall continue in force on and after the termination or expiry of the Agreement: 17 (Limitation of liability), 18 (Indemnities), 19 (Insurance), 10 (Employees), 12 (Confidentiality), 13 (Environmental Information Regulations), 14 (Public statements), 15 (Intellectual property rights), 16 (Data protection), 21 (Effect of termination), 32 (Beneficiaries to this contract), 33 (Waiver), 35 (Notices), 38 (Dispute resolution), 39 (Further assurance) and 40 (Governing law and jurisdiction).
- 22 CORRUPTION AND BRIBERY**
- 22.1 The Supplier shall:
- (a) at all times comply with all applicable Laws and sanctions relating to anti-bribery and corruption including but not limited to the Bribery Act;
- (b) not engage in any activity, practice or conduct which would constitute an offence by it under the Bribery Act;
- (c) devise, implement and enforce written policies and procedures constituting adequate procedures under the Bribery Act in order to prevent commission of any offence under the Bribery Act and/or any breach of any relevant Company Policies by the Supplier, its

- Staff, Representatives and/or associated persons to the Supplier. The Supplier shall, on the Company's request, provide the Company with copies of such written policies and procedures; and promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Agreement.
- 22.2 The Supplier shall ensure that any Sub-contractor, Representative or associated person of the Supplier who is supplying Goods and/or Services in connection with the 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 under this Clause 22. The Supplier shall be directly liable to the Company for any breach by such persons of any such terms.
- 23 AUDIT AND REPORTING**
- 23.1 The Supplier shall, and shall procure that its Sub-contractors shall, maintain for the Term and for a period of six (6) years thereafter, complete and accurate records of all information that results from, or is created or used in connection with, the performance of its obligations under the Agreement.
- 23.2 The Supplier shall undertake regular internal audits of its operations and its compliance with its obligations under the Agreement and, where relevant and appropriate, shall make executive summaries of the results of such audits available to the Company.
- 23.3 The Supplier shall, and shall procure that its Sub-contractors shall, promptly make available to the Company on request, and on reasonable notice allow the Company, its internal and external auditors and other advisors access to any information (including copies thereof) requested by any such persons, including, without limitation, any information requested by the Company in order to:
- monitor the Supplier's performance and compliance with its obligations under the Agreement;
 - verify any Charges or other amounts payable under the Agreement;
 - fulfil the Company's or any member of the Company's Group's reporting and other obligations to any governmental, regulatory or other authority, or to comply with any Law; and
 - verify and inspect any of the Company's or any member of the Company's Group's property which is in the Supplier's possession or control (including, without limitation, the Company's Intellectual Property Rights).
- 23.4 The Supplier shall provide the Company (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to any audit.
- 23.5 Subject to Clause 23.6 each Party shall bear its own costs of any audit undertaken in accordance with this Clause 23, but the Supplier shall be responsible for the costs of any agreed remedial action required by the Company (including any costs associated with demonstrating to the Company's reasonable satisfaction that such remedial action has been taken).
- 23.6 If an audit shows that the Supplier is not complying with the terms of the Agreement in any respect then, without prejudice to the Company's other rights and remedies, the Supplier shall:
- bear the reasonable costs incurred by the Company in exercising its right under Clause 23.3; and
 - adjust Charges and/or invoices issued to the Company to correct any inaccuracies and reimburse the Company for any resulting overpayment, together with interest from the date of overpayment to the date of reimbursement calculated daily at a rate of 2% above the Base Lending Rate of the Bank of England effective on the date of overpayment.
- 24 FORCE MAJEURE**
- 24.1 Neither Party to the Agreement shall be liable to the other for any delay or non-performance of its obligations under the Agreement to the extent that such delay or non-performance is due to a Force Majeure Event. Subject to Clause 24.3, the date for performance of any affected obligations will be suspended for a period equal to the delay caused by the Force Majeure Event.
- 24.2 If a Party is delayed in, or prevented from, performing its obligations under the Agreement by a Force Majeure Event, such Party shall:
- give notice in writing of the Force Majeure Event to the other Party specifying the nature, extent, likely duration and effect on its ability to perform its obligations immediately on becoming aware of it; and
 - use all reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations.
- 24.3 If the Force Majeure Event continues for a period of thirty (30) calendar days or more following notification, then either Party may terminate the Agreement by giving not less than ten (10) Business Days' prior written notice to the other Party.
- 24.4 The Company shall not be liable to pay the Charges in relation to any Goods and/or Services that are not provided by the Supplier due to a Force Majeure Event.
- 25 SECURITY FOR PERFORMANCE**
- 25.1 Either before or during the supply of the Goods and/or Services, the Company may request the Supplier to provide security for its performance of, and compliance with, the Agreement. Such security may take the form of a parent company guarantee or such other form of security as the Company may deem appropriate.
- 25.2 If the Supplier does not provide the security referred to in Clause 25.1 within a reasonable time frame stipulated by the Company, such failure shall constitute a material breach of the Agreement for the purposes of Clause 20.1(a).
- 26 RIGHTS CUMULATIVE**
- 26.1 The rights and remedies of the Parties in connection with the Agreement are cumulative and, except as expressly stated in the Agreement, are not exclusive of any other rights or remedies provided by the Agreement, in Law, equity or otherwise.
- COSTS**
- 27.1 Except as otherwise stated in the Agreement, each Party shall bear its own costs and expenses incurred in connection with the preparation, negotiation and execution, of the Agreement and all ancillary documents and any variations to the Agreement, or such ancillary documents.
- TAXATION**
- 28.1 All payments to be made under the Agreement by one Party to another Party must be without any Tax Deduction, unless a Tax Deduction is required by Law.
- 29 VARIATION**
- 29.1 No Change to the Agreement shall be valid or effective unless it is in writing and signed for and on behalf of each Party by its duly authorised representative.
- 30 ASSIGNMENT AND TRANSFER**
- 30.1 The Supplier shall not be entitled to assign, transfer, or otherwise deal with any of its rights or obligations arising under or in connection with the Agreement except with the Company's prior written consent which the Company may grant or withhold in its absolute discretion.
- 30.2 The Agreement may be assigned or novated by the Company, in whole or in part, at any time and on more than one occasion to any member of the Company's Group or any successor of all or part of the Company's Group's business or assets.
- 31 SUB-CONTRACTING**
- 31.1 The appointment of Sub-contractors or the performance of the Supplier's obligations by or through any person other than the Supplier shall be subject to the Company's prior written approval. The Supplier shall remain liable to the Company for any performance or non-performance of its obligations under the Agreement by its Sub-contractors.
- 31.2 The Supplier shall promptly and fully inform each Sub-contractor of the provisions of the Agreement which apply to it and shall ensure that each sub-contract with its Sub-contractors binds them to such provisions of the Agreement.
- 31.3 Where a Sub-contractor is subject to an Insolvency Event or otherwise where the Company (acting reasonably) believes that it is no longer appropriate for, or capable of, assisting the Supplier in supplying the Goods and/or Services to the standards required by the Agreement, the Company may, by written notice, withdraw any consent granted pursuant to Clause 31.1. Where consent is withdrawn pursuant to this Clause 31.3 the Supplier shall cease to use the Sub-contractor in respect of the Agreement as soon as reasonably practicable.
- 31.4 The Supplier shall report to the Company any delay, failure of performance under, or termination of, any sub-contract with any Sub-contractor as soon as reasonably practicable after such delay, failure or termination.
- 32 BENEFICIARIES TO THIS CONTRACT**
- 32.1 Any Successor shall be entitled to rely upon the provisions of Clause 10 in its entirety and the relevant terms of the Agreement shall be used to interpret the provisions of Clause 10 where necessary.
- 32.2 Notwithstanding Clause 32.1, the Company and the Supplier may agree to rescind or vary the Agreement without the consent of any other person or entity.
- 32.3 Except as provided in Clause 10, Clause 32.1 and Clause 32.2, the Agreement is not intended to be for the benefit of, and shall not be

enforceable by any person (other than by a Party and any member of the Company's Group) under the Contracts (Rights of Third Parties) Act 1999.

33 WAIVER

33.1 No failure or delay by a party to insist upon strict performance or observance of any terms of the Agreement, or to exercise any right or remedy provided under the Agreement shall constitute a waiver of any breach, right or remedy, unless it is in writing signed by an authorised representative of that Party and refers expressly to this Clause 33.

34 SEVERABILITY

34.1 If any provision of the Agreement is or becomes illegal, invalid or unenforceable the provision will apply with whatever minimum level of deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the Parties' commercial intention.

34.2 Any modification to or deletion of a provision under Clause 34 shall not affect the validity and enforceability of the rest of the Agreement.

35 NOTICES

35.1 All Notices shall be sent for the attention of the contact and at the address specified below:

(a) in the case of the Supplier:

Attention: the Supplier's Contract Manager

Address: the Supplier's Registered Office

(b) in the case of the Company:

Attention: the Company's Contract Manager

Address: Tamblin Way, Hatfield, Hertfordshire, AL10 9EZ

35.2 All Notices shall be in writing, in English, delivered by hand or sent by pre-paid registered post (or courier using an internationally registered courier company if sent abroad). A Party may change the details recorded for it in Clause 35.1 by Notice to the other. A Notice shall be treated as having been received at the time of delivery.

35.3 Any notices or communications in respect of the Agreement which are not Notices may be validly sent by email.

36 ENTIRE AGREEMENT

36.1 The Agreement sets out the entire agreement between the Parties, and supersedes all proposals and prior written or oral agreements, arrangements and understandings between the Parties, relating to its subject matter.

36.2 Each Party acknowledges that in entering into the Agreement it does not rely on any representation, warranty, undertaking, collateral contract or other assurance of the other Party that is not set out in the Agreement.

36.3 Nothing in the Agreement shall limit or exclude any liability for fraud or fraudulent misrepresentation.

37 NO PARTNERSHIP OR AGENCY

37.1 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

38 DISPUTE RESOLUTION

38.1 The Parties agree to co-operate with each other in an amicable manner with a view to achieving the successful implementation of the Agreement.

38.2 If a Dispute arises between the Company and the Supplier during the Term in relation to any matter which cannot be resolved by local operational management either Party may refer the matter for determination in accordance with the procedure set out in Clause 38.3.

38.3 A Dispute referred for determination under Clause 38.2 shall be resolved as follows:

(a) by referral in the first instance for decision by the Contract Manager for each of the Parties; and

(b) if a Dispute is not resolved within fourteen (14) calendar days of its referral pursuant to Clause 38.3(a), such Dispute shall be referred to the line manager of the Contract Manager for each Party; and

(c) if a Dispute is not resolved within twenty one (21) calendar days of its referral pursuant to Clause 38.3(b) such Dispute shall be referred to a director/the chief executive of each Party; and

(d) if the persons to whom the Dispute is referred under Clause 38.3(c) are unable to resolve the Dispute within thirty (30) calendar days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve an ADR Notice to the other Party, requesting mediation. A copy of the ADR Notice should be sent to CEDR. The mediation will start not later than twenty (20) Business Days after the date of the ADR Notice; and

(e) if the Dispute is not resolved within twenty (20) Business Days after service of the ADR Notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of such period, or the mediation terminates before the expiration of such period, the Dispute shall be finally resolved by the courts of England in accordance with Clause 40 (Governing Law and Jurisdiction).

38.4 Neither Party shall be prevented from, or delayed in, seeking orders for specific performance or interlocutory or final injunctive relief on an ex parte basis or otherwise because of the terms of this Clause 38. This Clause 38 shall not apply in respect of any circumstances where such remedies are sought.

39 FURTHER ASSURANCE

39.1 The Supplier shall, at its own cost, do and/or execute, or arrange for the doing and/or execution of, any act and/or document reasonably requested of it by the Company to implement and give full effect to the terms of the Agreement.

40 GOVERNING LAW AND JURISDICTION

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

40.2 Subject to the provisions of Clause 38 each Party irrevocably submits to the exclusive jurisdiction of the English courts in relation to all matters (including any non-contractual dispute or claim) arising out of or in connection with the Agreement, its subject matter or formation.