



PARSEQ

Parseq Limited

Terms and Conditions of Purchase

- Acquire
- Retain
- Improve

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Anti-Slavery Laws: all statutes, statutory instruments, bye-laws, orders, directives, treaties, decrees and laws (including any common law, judgment, demand, order or decision of any court, regulator or tribunal) anywhere in the world which relate to anti-slavery or servitude, anti-forced or compulsory labour and/or anti-human trafficking, including the Modern Slavery Act 2015

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 19.7.

Contract: the contract between the Customer and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

Customer: Parseq Limited registered in England and Wales with company number 05815806 whose registered address is at Lowton Way, Hellaby, Rotherham, South Yorkshire, S66 8RY or any other company stated in the relevant Order.

Customer Materials: has the meaning set out in clause 5.3(i).

DPA: the Data Protection Act 2018.

Data Protection Legislation: means collectively (i) the DPA (ii) the UK General Data Protection Regulation (Regulation (EU) 2016/679) (as may be modified or amended from time to time) and any applicable national implementing Applicable Law as amended from time to time (iii) any other applicable legislation relating to the Processing of Personal Data and (iv) any successor legislation or regulation of the aforementioned laws and regulations.

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

Goods: the goods (or any part of them) set out in the Order.

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

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Modern Slavery Practices: any practice amounting to (a) slavery or servitude (each as construed in accordance with Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 as amended), (b) forced or compulsory labour (as defined by the

International Labour Organisation's Forced Labour Convention 1930 (No. 29) and Protocol), (c) human trafficking or (d) the arranging or facilitation of the travel of another person with a view to that person being exploited

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or in the Customer's written acceptance of the Supplier's quotation, as the case may be.

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

Service Specification: the description or specification for Services agreed in writing by the Customer and the Supplier.

Sub-Processor: any person or entity which is not a party to the Contract and which is engaged by the Supplier to perform any or all of its obligations under the Contract.

Supplier: the person or firm from whom the Customer purchases the Goods and/or Services.

TUPE Regulations: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).

1.2 In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a references to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. BASIS OF CONTRACT

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

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

- (a) the Supplier issuing written acceptance of the Order; or
- (b) any act by the Supplier consistent with fulfilling the Order,

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

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing (including,

without limitation, any terms and conditions which the Supplier purports to apply in any quotation, form of acceptance, acknowledgement, delivery form, invoice or other document).

2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

3. SUPPLY OF GOODS

3.1 The Supplier shall ensure that the Goods shall:

- (a) correspond with their description and any applicable Goods Specification;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment;
- (c) where applicable, be free from defects in design, materials and workmanship and remain so for a minimum of 24 months after delivery; and
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 The Customer shall have the right to inspect and test the Goods at any time before delivery.

3.4 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. DELIVERY OF GOODS

4.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;

- (c) if requested by the Customer, it provides evidence of the place of origin of the Goods or any part of the Goods or of raw materials utilised in their manufacture; and
- (d) if the Supplier requires the Customer to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

- (a) on the date specified in the Order or otherwise as agreed between the parties (each shall be of the essence);
- (b) to the location as is set out in the Order or as instructed by the Customer before delivery (**Delivery Location**);
- (c) during the Customer's normal hours of business on a Business Day, or as instructed by the Customer.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location and the Customer shall not be deemed to have accepted the Goods until it has had ten Business Days to inspect them following delivery.

4.4 If the Supplier:

- (a) delivers less than 95 per cent of the quantity of Goods ordered, the Customer may reject the Goods; or
- (b) delivers more than 100 per cent of the quantity of Goods ordered, the Customer may at its sole discretion reject the excess Goods or retain the excess Goods free of charge,

and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers less than the quantity of Goods ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

4.5 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 6.1.

4.6 Title and risk in the Goods shall pass to the Customer on completion of delivery. If Goods are paid for prior to delivery, title (but not risk) shall pass to the Customer on payment.

5. SUPPLY OF SERVICES

5.1 The Supplier shall from the date set out in the Order and for the duration of this Contract provide the Services to the Customer in accordance with the terms of the Contract.

5.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Customer.

5.3 In providing the Services, the Supplier shall:

- (a) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
- (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws, statutory requirements, governmental, local authority and other regulations and orders (whether voluntary or not);
- (h) observe all health and safety rules and regulations, confidentiality and any other security requirements that apply at any of the Customer's premises;
- (i) hold all information, materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation; and
- (j) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services.

6. CUSTOMER REMEDIES

6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
- (d) where the Customer has paid in advance for Services that have not been provided by the

Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and

- (e) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.

6.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies, the Customer shall have one or more of the following rights, whether or not it has accepted the Goods:

- (a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- (b) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with clause 3.1.

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

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

7. CHARGES AND PAYMENT

7.1 The price for the Goods:

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

7.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

7.3 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy

of the invoice, including but not limited to the relevant purchase order number.

- 7.4 In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall pay the invoiced amounts within 60 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 7.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 7.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.
- 7.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.
- 7.8 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 In respect of the Goods and any goods that are transferred to the Customer as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to sell and transfer all such items to the Customer.
- 8.2 The Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 8.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

8.4 The Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 8.2.

8.5 All Customer Materials are the exclusive property of the Customer.

9. DATA PROTECTION

9.1 In this clause 9, the terms "Personal Data", "Process(ing)", "Data Controller", "Data Processor" and "Data Subject" shall have the same meaning as in the DPA and any modification or re-enactment thereof.

9.2 With respect to the parties' rights and obligations under the Contract, both parties agree that the Supplier is the Customer's and/or its customer's Data Processor (as applicable).

9.3 Without prejudice to clause 9.2, where the Supplier Processes any Personal Data as Data Controller, the Supplier will comply at all times with the Data Protection Legislation.

9.4 In respect of any Personal Data Processed by the Supplier pursuant to the Contract for and/or on behalf of the Customer and/or any of its customers (as appropriate), the Supplier will:

- (a) comply at all times with the Data Protection Legislation;
- (b) only Process the Personal Data to the extent necessary to supply the Goods and/or Services and on the written instructions received from the Customer or the relevant customer (as appropriate) from time to time;
- (c) put in place appropriate technical and organisational measures to prevent the accidental or unlawful destruction of or accidental loss of, alteration to, unauthorised disclosure of or access to Personal Data, such measures will include:
 - (i) encryption and pseudonymisation of Personal Data, as appropriate, or as may be required by the Customer;
 - (ii) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of relevant systems and services that Process the Personal Data;
 - (iii) without prejudice to any general obligations relating to confidentiality in the Contract, ensure that its personnel are subject to binding obligations of confidentiality with respect to Personal Data;
 - (iv) the ability to restore the availability and access to the Personal Data in a timely manner in the event of a physical or technical incident, including, but not limited to, a Security Breach (as defined below); and
 - (v) a process for regularly testing, assessing and evaluating the effectiveness of the Supplier's technical and organisational measures for ensuring the security of the Processing of Personal Data under the Contract;
- (d) not cause or permit the Personal Data to be transferred outside the European Economic Area (as defined in the DPA) without (i) the Customer's or relevant customer's prior written consent

(as appropriate);

- (e) promptly provide all information and cooperation requested by the Customer and each customer (as relevant) in relation to compliance with the Data Protection Legislation, including in relation to:
 - (i) any Data Subject exercising his or her rights under the DPA; and
 - (ii) any actual or suspected incident of unauthorised or accidental disclosure of or access to Personal Data (a **Security Breach**) and any communication, assessment, enquiry, notice or investigation by any regulatory body, including the Information Commissioner's Office, in connection with any Security Breach.
- (f) promptly notify the Customer on receiving any notice or communication from any supervisory or government body which relates directly or indirectly to the processing of Personal Data controlled by the Customer and/or any of its customers;
- (g) not cause the Customer or any of its customers (as appropriate) to be in breach of any part of the Data Protection Legislation, whether by reason of the Supplier's act or omission and/or any act or omission of any person acting on the Supplier's behalf; and
- (h) upon termination or expiry of the Contract, the Supplier shall, at Customer's request, promptly delete or return all Personal Data and delete the copies thereof (unless applicable law requires the storage of such Personal Data) and shall confirm to Customer in writing that it has done so. This provision is without prejudice to any provisions in the Contract relating to how long the Supplier may retain data after the Contract terminates.

9.5 The Supplier shall not authorise any third party or Sub-Processor to process the Personal Data other than with the prior written consent of Customer.

9.6 Where the Supplier is a processor with respect to the Personal Data, it shall impose obligations on its Sub-Processors that are the same as or equivalent to those set out in the Contract by way of written contract, and shall remain liable to Customer for any failure by a Sub-Processor to fulfil its obligations in relation to the Personal Data

9.7 The Supplier shall inform the Customer immediately if it is asked to do something that will, or is likely to, infringe Data Protection Legislation.

9.8 Taking into account the nature and scope of the Services provided by the Supplier, the Supplier shall, to the extent possible, provide such assistance as the Customer may reasonably require to comply with its obligations as a data controller, including in relation to data security, data breach notification, data protection impact assessment, prior consultation with data protection authorities, any enquiry, notice or investigation received from a data protection authority, and the fulfilment of data subjects' rights.

9.9 The Supplier shall make available to Customer all information reasonably necessary to demonstrate its compliance with the obligations set out in the Contract, and allow for and co-operate with any audits, including physical inspections of its premises, required by Customer. Any such audit or inspection shall be conducted on reasonable notice during normal business hours.

10. ANTI-CORRUPTION AND ANTI-SLAVERY

10.1 The Supplier warrants and represents to the Customer that:

- (a) it complies and shall continue to comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption and slavery and trafficking, including but not limited to the Bribery Act 2010 and the Anti-Slavery Laws (**Relevant Requirements**);
- (b) it has thoroughly investigated its labour practices and those of its direct suppliers to ensure that there is no Forced Labour or Slavery (as such terms are defined by the International Labour Organisation (**ILO**) from time to time, including in any present or future ILO conventions) used anywhere in the Supplier's business or by any of the direct suppliers of the Supplier;
- (c) provide the Customer with such reasonable assistance and information as it may require from time to time to enable it to:
 - (i) perform any activity required by any government, regulatory entity or agency in any relevant jurisdiction for the purpose of compliance with any applicable Anti-Slavery Laws or as we require;
 - (ii) prepare a slavery and human trafficking statement as required by section 54 Modern Slavery Act 2015 and to include the matters referred to in section 54(5) of that Act; and
 - (iii) conduct due diligence and to measure the effectiveness of the steps we are taking or wish to take to ensure that Modern Slavery Practices are not taking place in our business or supply chains;
- (d) it has put in place all necessary processes, procedures, investigations and compliance systems to ensure that the warranties and representations made in this clause 10.1 will continue to be true and accurate at all times during the term of this Contract and will enforce them where appropriate;
- (e) it has taken and will take in the future all necessary actions and investigations to validate compliance with the warranties and representations made in this clause 10.1;
- (f) not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (g) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract;
- (h) immediately notify the Customer (in writing) the Supplier has a change in its Control and/or if a foreign public official becomes an officer or employee of the Supplier and/or acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers or employees and/or direct or indirect owners at the date of the Contract);
- (i) annually during the Contract, certify to the Customer in writing signed by an officer of the Supplier, compliance with this clause 10.1 by the Supplier and all persons associated with it under clause 10.2. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request.

- 10.2 The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 10.1 (**Relevant Terms**). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.
- 10.3 For the purpose of this clause 9, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance the Bribery Act 2010 (and any guidance issued under section 9 of that Act. For the purposes of this clause 9, a person associated with the Supplier includes any subcontractor of the Supplier.
- 10.4 Breach of this clause 9, shall be deemed a material breach under clause 16.

11. AUDIT AND RECORD KEEPING

- 11.1 The Supplier shall, and shall procure that its third party suppliers and/or subcontractors (**Supplier Third Parties**), keep and maintain at its normal place of business detailed, accurate and up to date records and books of account showing all payments made and received by the Supplier in connection with the Contract and/or relating to the Goods and/or Services and the steps taken by the Supplier to comply with the Contract (**Books and Records**), in each case during the previous six years. The Supplier shall ensure that such Books and Records are sufficient to enable the Customer to verify the Supplier's compliance with its obligations under the Contract. The Books and Records shall be maintained in accordance with generally accepted accounting practice.
- 11.2 The Supplier shall, and shall procure that any Supplier Third Parties shall, permit the Customer and its third party representatives (including, without limitation, its auditors or other advisers), on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of the Contract, to access and take copies of the Supplier's records (including the Books and Records).
- 11.3 The Supplier shall, and shall procure that any Supplier Third Parties shall, provide the Customer (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to each audit. Such audit rights shall continue for three years after termination of the Contract. The Supplier shall give all necessary assistance to the conduct of such audits during the term of the Contract and for a period of six years after termination of the Contract.
- 11.4 Each party will bear its own costs and expenses incurred in respect of compliance with this clause 11, unless the audit identifies a material breach of the Contract by the Supplier, in which case the Supplier will reimburse the Customer for all of our reasonable costs incurred in the course of the audit.
- 11.5 If an audit under clause 11 identifies that the Supplier has failed to perform its obligations under the Contract then, without prejudice to the Customer's other rights and remedies, the Supplier will promptly take the necessary steps to comply with its obligations at no additional cost to the Customer.

12. INDEMNITY

- 12.1 The Supplier shall keep the Customer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered incurred by the Customer as a result of or in connection with:
- (a) any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
 - (b) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
 - (c) any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and/or
 - (d) any breach by the Supplier of these Conditions (including any failure or delay in performing, or negligent performance or non-performance of, any of those obligations).

13. PERSONNEL

In the event that the TUPE Regulations do apply upon the commencement of the Contract to transfer any persons employed by the Supplier into the employment of the Customer, the Supplier shall indemnify the Customer against, pay on demand and make good all liabilities incurred, all damages and loss suffered, all claims demands actions and proceedings made or brought and all costs disbursements and expenses incurred by the Customer, arising directly or indirectly therefrom (including, without limitation, any costs of terminating the employment of such persons (for redundancy or otherwise and, any compensation or damages paid to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages).

14. INSURANCE

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

15. CONFIDENTIALITY

- 15.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or

subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

16. TERMINATION

16.1 Without limiting its other rights or remedies, the Customer may terminate the Contract:

- (a) in respect of the supply of Services, by giving the Supplier one month's written notice; and
- (b) in respect of the supply of Goods, in whole or in part at any time before delivery with immediate effect by giving written notice to the Supplier, whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

16.2 In any of the circumstances in these Conditions in which a party may terminate the Contract, where both Goods and Services are supplied, that party may terminate the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

16.3 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing to do so;
- (b) the Supplier repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
- (c) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (d) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other

companies or the solvent reconstruction of the Supplier;

- (f) the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- (g) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (h) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
- (i) the holder of a floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (k) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.3(c) to clause 16.3(j) (inclusive);
- (l) the Supplier suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business; or
- (m) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

16.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

16.5 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

17. CONSEQUENCES OF TERMINATION

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

18. FORCE MAJEURE

18.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from an event, circumstances or cause beyond its reasonable control (**Force Majeure Event**).

18.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

18.3 If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 10 Business Days, the Customer may terminate the Contract immediately by giving written notice to the Supplier.

19. GENERAL

19.1 Assignment and other dealings.

- (a) The Customer may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Customer.

19.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, or commercial courier.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 19.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

19.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

19.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

- 19.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 19.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Customer.
- 19.8 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 19.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).