

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

**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 given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 21.8.

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

**Control:** shall be defined as in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

**Customer:** The University of Winchester.

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

**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 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, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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.

**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, or overleaf, as the case may be.

**Services:** the services, including 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.

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

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed

as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

- (e) A reference to **writing or written** includes faxes and emails.

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.
- 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 judgement;
  - (c) where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 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; and
  - (e) Be fit for any purposes of which the Customer has made the Supplier aware.
- 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 may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.
- 3.4 If following such inspection or testing the Customer considers that the Goods do not comply 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 The Customer may 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; and

- (c) it states clearly on the delivery note any requirement for the Customer to return any packaging material for the Goods to the Supplier. 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;
- (b) to the Customer's premises at, Sparkford Road, Winchester, SO22 4NR or such other location as is set out in the Order or as instructed by the Customer before delivery (**Delivery Location**); and
- (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.

4.4 If the Supplier:

- (a) delivers less than 95% of the quantity of Goods ordered, the Customer may reject the Goods; or
- (b) delivers more than 105% of the quantity of Goods ordered, the Customer may at its sole discretion reject the Goods or the excess Goods,

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

5. **Supply of Services**

5.1 The Supplier shall from the date set out in the Order and for the duration of the Contract supply 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 that the Customer notifies to the Supplier and time is of the essence in relation to any of those performance dates.

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 the 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 that the Customer expressly or impliedly makes known to the Supplier;
- (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 licences and consents which may be required for the provision of the Services;
- (h) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services, and with the Mandatory Policies;
- (i) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- (j) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- (k) 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; and
- (l) comply with any additional obligations as set out in the Service Specification.
- 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 or affecting other rights or remedies available to it, 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) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; 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 Goods are not delivered by the applicable date, the Customer may, at its option, claim or deduct 0.1% of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 10% of the total price of the Goods. If the Customer exercises its rights under this clause 6.2 it shall not be entitled to any of the remedies set out in clause 6.1 in respect of the Goods' late delivery.
- 6.3 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights, whether or not it has accepted the Goods:
- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) 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;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (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.
- 6.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 6.5 The Customer's rights under the Contract are in addition to its rights and remedies implied by statute and common law.
- 7. Customer's obligations**
- 7.1 The Customer shall:
- (a) provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and
- (b) provide such necessary information for the provision of the Services as the Supplier may reasonably request.
- 8. Charges and payment**
- 8.1 The price for the Goods:
- (a) shall be the price set out in the Order, or if no price is quoted or specifically agreed between the parties, 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. No extra charges shall be effective unless agreed in writing and signed by the Customer.
- 8.2 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.
- 8.3 In respect of the 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.
- 8.4 In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall use reasonable endeavours to pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 8.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value 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.
- 8.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 8.7 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.
- 8.8 The Customer may at any time, without notice to the Supplier, 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. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.
- 9. Intellectual property rights**
- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services (other than Intellectual Property Rights in any Customer Materials or pre-existing Intellectual Property rights) shall be owned by the Supplier.
- 9.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding Customer Materials) for the purpose of receiving and using the Services and the Deliverables.
- 9.3 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to use any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.
- 9.4 All Customer Materials are the exclusive property of the Customer.
- 10. Indemnity**
- 10.1 The Supplier shall indemnify the Customer 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 or incurred by the Customer arising out of or in connection with:
- (a) any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Customer Materials);
- (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 the Goods, as delivered, or the Deliverables; and
- (c) any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.
- 10.2 This clause 10 shall survive termination of the Contract.
- 11. Insurance**
- 11.1 During the term of the Contract the Supplier shall maintain in force, with a reputable insurance company the following insurances 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:

- (a) product liability insurance coverage of not less than five million pounds sterling (£20,000,000) for any one, or series of claims that may arise; and
- (b) professional indemnity insurance coverage of coverage for a period from the Commencement Date to a date of not less than six (6) years from the Commencement Date of not less than two million pounds sterling (£2,500,000) for any one, or series of claims that may arise; and
- (c) public liability insurance coverage of not less than five million pounds sterling (£20,000,000) for any one, or series of claims that may arise.

## 12. Confidentiality

- 12.1 Each party undertakes that it shall not at any time during the Contract and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.
- 12.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information must comply with this clause 12; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## 13. Equality

- 13.1 The Supplier shall perform its obligations under the Contract in accordance with:
- (a) all applicable equality laws including the Equality Act 2010 (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
  - (b) the Customer's Equality and Diversity Policy; and
  - (c) any other requirements and instructions which the Customer reasonably imposes in connection with any equality obligations imposed on the Customer at any time under applicable equality law.

## 14. Prevention of Bribery and Corruption

- 14.1 The Supplier shall:
- (a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (the "Relevant Requirements");
  - (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - (c) comply with the Customer's Anti-bribery Policy as in force from time to time (the "Relevant Policies");
  - (d) have and shall maintain in place throughout the term of the Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policies, and will enforce them where appropriate;
  - (e) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received

by the Supplier in connection with the performance of the Contract;

- (f) immediately notify the Customer in writing if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier, and the Supplier warrants that it has no foreign public officials as direct or indirect owners, officers or employees as at the commencement of the Contract.

14.2 The Supplier shall ensure that any person associated with the Supplier who is performing services or supplying 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 14 (the "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.

14.3 Breach of this clause 14 by the Supplier shall be deemed a material breach incapable of remedy.

## 15. Prevention of Slavery/Forced Labour

15.1 The Supplier confirms that neither it nor any of its personnel (or those of its subcontractors) have been: (i) convicted of any offence; or (ii) the subject of an investigation, inquiry or enforcement proceedings involving slavery or human trafficking. The Supplier shall: (i) comply with all applicable laws relating to slavery, including the Modern Slavery Act 2015; (ii) comply with the Customer's Anti-slavery Policy as in force from time to time; (iii) maintain a complete set of records to trace the supply chain of all the Goods and Services provided to the Customer under the Contract; (iv) implement a system of training for its employees, suppliers and subcontractors to ensure compliance with this clause 15.115 (and keep a record of all such training).

15.2 The Supplier shall not purchase any resources and/or materials that have been sourced from entities using forced labour. The Supplier shall implement and maintain due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

## 16. GDPR and/or Data Protection Act 2018

16.1 Where any activity carried out by the Supplier in respect of the provision of the Goods or Services falls within the provisions of the GDPR and Data Protection Act 2018 (the "GDPR/DPA"), the Supplier shall comply with this, and acknowledges and agrees that it shall be acting as a data processor for the Customer, in respect of the personal data processed by the Supplier on behalf of the Customer in the provision of the Goods and/or Services and the Customer shall be the data controller.

16.2 The Supplier shall ensure that appropriate technical and organisational measures are established and maintained to protect against the unauthorised or unlawful processing of personal data and against loss or destruction of, or damage to, personal data processed by the Supplier on behalf of the Customer. Such measures shall (taking into account the state of technological development and the cost of implementing such measures) be appropriate to the nature of the personal data processed by the Supplier and comply with the provisions of the GDPR and the DPA 2018.

16.3 The Supplier shall only process personal data on behalf of the Customer in accordance with the Contract, the DPA and any lawful and reasonable instructions issued by the Customer from time to time and for no other purpose whatsoever, save as required by law.

16.4 The Supplier shall keep the personal data processed by the Supplier under the Contract safe and confidential, and will ensure that only

such of its employees, servants, agents and sub-contractors who may be required by the Supplier to assist it in providing the Goods and/or Services shall have access to the personal data.

16.5 The Supplier shall adopt and maintain a written security policy in relation to personal data processed by it on behalf of the Customer and shall procure that all of its employees, servants, agents and sub-contractors are aware of and abide by all of the provisions of such policy and the provisions of this paragraph and shall make such policy available for inspection on request by the Customer.

16.6 The Supplier shall permit the Customer's representatives to have access on reasonable written notice to the personal data processed by the Supplier on behalf of the Customer, including but not limited to where this is necessary in order to enable the Customer to respond to a subject access request made under the GDPR and DPA 2018.

16.7 The Supplier shall notify the Customer (within two Business Days days), if it receives:

- (a) a request from a data subject to have access to that person's personal data; or
- (b) a complaint or request relating to the Customer's obligations under the GDPR and DPA 2018.

16.8 The Supplier shall provide the Customer with full co-operation and assistance in relation to any complaint or request made, including by:

- (a) providing the Customer with full details of the complaint or request;
- (b) complying with a data access request within the relevant timescales set out in GDPR and DPA 2018 and in accordance with the Customer's instructions;
- (c) providing the Customer with any personal data it holds in relation to a data subject (within the timescales required by the Customer); and
- (d) providing the Customer with any information requested by the Customer.

16.9 The Supplier shall not process personal data outside the European Economic Area without the prior written consent of the Customer and, where the Customer consents to a transfer, to comply with any reasonable instructions notified to it by the UNIVERSITY.

16.10 The Supplier will indemnify the Customer in full against all losses, claims, costs, expenses or other liabilities awarded against, or incurred by, the Customer directly arising as a result of, any breach of this paragraph by the Supplier, its employees, servants, agents or sub-contractors.

## 17. Freedom of Information

17.1 The Supplier acknowledges that the Customer is subject to the requirements of Freedom of Information Act 2000 (the "FOIA") and the Environmental Information Regulations 2004 (the "EIR") and shall assist and co-operate with the Customer to enable the Customer to comply with these information disclosure requirements.

17.2 The Supplier shall and shall procure that its sub-contractors shall:

- (a) transfer any request for information in relation to the FOIA or the EIR to the Customer as soon as practicable after receipt and in any event within two Business Days of receipt;
- (b) provide the Customer with a copy of all information in its possession or power in the form that the Customer requires within seven days (or such other period as the Customer may specify) of the Customer requesting that information; and
- (c) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to a request for information within the time for compliance set out in section 10 of FOIA or regulation 5 of the EIR.



- 17.3 The Customer shall be responsible for determining at its absolute discretion whether any information:
- (a) is exempt from disclosure in accordance with the provisions of FOIA or the EIR; and/or
  - (b) is to be disclosed in response to a request for information.
- 17.4 In no event shall the Supplier respond directly to a request for information unless expressly authorised to do so by the Customer.
- 17.5 The Supplier acknowledges that the Customer may be obliged under FOIA or the EIR to disclose Information:
- (a) without consulting with the Supplier, or
  - (b) following consultation with the Supplier and having taken its views into account.
- 17.6 The Supplier shall ensure that all information produced in the course of or relating to the Contract is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.
- 17.7 The Supplier acknowledges that any lists or schedules provided by it outlining confidential information are of indicative value only and that the Customer may or may not have to disclose recorded information in line with FOIA 2000 and the ICO's guidance on this.
- 17.8 This clause 17 shall survive the expiry or termination of this Contract.
- 18. Termination**
- 18.1 Without affecting any other right or remedy available to it, the Customer may terminate the Contract:
- (a) with immediate effect by giving written notice to the Supplier if:
    - (i) there is a change of Control of the Supplier; or
    - (ii) the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
    - (iii) the Supplier commits a breach of **clause 5.3(h)**.
  - (b) for convenience by giving the Supplier one month's written notice.
- 18.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 10 days after being notified to do so;
  - (b) the other 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
  - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 19. Consequences of termination**
- 19.1 On termination of the Contract, the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 19.2 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 19.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 20. Force majeure**
- 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 delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 2 weeks, the party not affected may terminate this agreement by giving 2 days' written notice to the affected party.
- 21. General**
- 21.1 Assignment and other dealings.**
- (a) The Customer may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.
  - (b) The Supplier shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract [without the prior written consent of the Customer].
- 21.2 Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number.
  - (b) A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; 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 sent by fax, at 9.00 am on the next Business Day after transmission.
  - (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 21.3 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.
- 21.4 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 21.5 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, constitute either party the
- agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 21.6 Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 21.7 Third party rights.**
- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
  - (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 21.8 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 parties or their authorised representatives.
- 21.9 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 21.10 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.