

SALCS INSTALLATIONS LIMITED

TERMS AND CONDITIONS FOR THE SUPPLY OF DELIVERABLES

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following words and expressions have the following meanings unless inconsistent with the context:

“Additional Charges” any expenses, any taxes, duties or other charges levied by any Governmental or authority in respect of or by reason of the sale, delivery, export or import of the Deliverables, courier and messenger costs, archiving and any other additional charges payable by the Customer in addition to the Price;

“Anticipated Delivery Date” the date(s) on which the Supplier shall deliver the Deliverables in accordance with Condition 8.1 and as indicated by the Supplier in the Contract Details or on the date(s) as otherwise agreed between the parties in writing from time to time;

“Conditions” these terms and conditions;

“Confidential Information” without limitation, business, commercial, economic, financial, operational, technical, administrative, marketing, planning and staff information and data relating to the Supplying Party or its interests disclosed including any Intellectual Property Rights to the Receiving Party whether before, during or after the provision of the Deliverables, whether in written, oral, pictorial or any other form, and all information, data, know-how, trade secrets, formulae, processes, designs, photographs, drawings, specifications, software programs, samples or other material attributable to or deriving its existence from the provision of the Deliverables. “Supplying Party” and “Receiving Party” shall have the meanings ascribed in Condition 14;

“Contract” any agreement for the supply of Deliverables from the Supplier to the Customer in accordance with Condition 2.5;

“Contract Details” the specific details of the Contract confirmed by the Supplier in writing to the Customer including the exclusions and assumption contained therein, and any Proposal;

“Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures” are as defined in the Data Protection Legislation;

“Costs” all costs, (including but not limited to any legal fees (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier (either directly or by a third party) including disbursements, VAT and other expenses;

“Customer” the person which has accepted these Conditions as set out in the Contract Details;

“Data Protection Legislation” the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party;

“Deliverables” Goods, Services, all products, materials and Documents developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form, including, without limitation, computer programs, data, reports and specifications (including drafts);

“Delivery Location” the location for delivery of the Deliverables in accordance with Condition 8.1 and as set out in the Contract Details;

“Documents” without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture, or other image, tape, disk or other device or record embodying information in any form;

“Due Date” the date on which payment is due in accordance with Condition 4.3;

“Goods” all goods supplied by the Supplier to the Customer pursuant to the Contract as detailed in the Contract Details;

“Input Materials” all Documents, information and materials provided by the Customer, including computer programs, data, reports and specifications and any such requirements set out in the Contract Details;

“Intellectual Property Rights” all patents, industrial designs, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world and “Intellectual Property Right” means any one of the Intellectual Property Rights;

“Normal Working Hours” means 8:00 am to 6:00 pm GMT, Monday to Friday except English Bank Holidays;

“Price” the price due from the Customer for the supply of the Deliverables as detailed in the Contract Details;

“Proposal” any proposal, tender, estimate, scope of works or quotation submitted to the Customer by the Supplier prior to the Contract being made;

“Services” the services to be provided by the Supplier to the Customer pursuant to the Contract and detailed in the Contract Details;

“Supplier” SALCS Installations Limited a company incorporated in England and Wales with company number 08444545 whose registered office is at Marshall House, Heanor Gate Road, Heanor, Derbyshire, England, DE75 7RG;

“Term” as set out in the Contract Details;

“UK Data Protection Legislation” all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and

Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

“Unpaid Amount” any sum due to the Supplier under the Contract which has not been paid by the Customer to the Supplier by the Due Date; and

“Working Day” any day from Monday to Friday other than a statutory holiday or public holiday in England.

- 1.2 References to any statute or statutory provision include, unless the context otherwise requires, a reference to the statute or statutory provision as modified or re-enacted and in force from time to time, and any subordinate legislation made from time to time under the relevant statute or statutory provision.
- 1.3 References to **“persons”** include natural persons, firms, partnerships, companies, corporations, associations and organisations, (in each case whether or not having separate legal personality).
- 1.4 Use of any gender includes the other genders.
- 1.5 Words in the singular include the plural and words in the plural include the singular.
- 1.6 Any reference to **“writing”** or any cognate expression includes communications by post and email but excludes facsimile and text messages.
- 1.7 The headings to Conditions do not affect the interpretation of these Conditions.
- 1.8 Any phrase introduced by the term **“include”, “including”, “in particular”** or any similar expression will be construed as illustrative and will not limit the sense of the words preceding that term.

2. BASIS OF CONTRACT

- 2.1 These Conditions shall apply to the sale and supply by the Supplier of all Deliverables purchased by the Customer and these Conditions shall govern the Contract to the exclusion of any other terms and conditions introduced or submitted by the Customer.
- 2.2 No variation of these Conditions shall be binding unless agreed in writing by a director of the Supplier and no collateral or supplemental contract may be made or construed unless confirmed in writing by a director of the Supplier.
- 2.3 Any Proposal submitted to the Customer will not constitute an offer and shall remain valid for the period stated therein, but if no period is specified such Proposal shall be valid for 14 days from the date of issue. Notwithstanding this Condition 2.3, any Proposal shall no longer be valid where a sub-contractor or supplier has changed its charges.
- 2.4 Each order or acceptance of a Proposal for the supply of Deliverables by the Customer shall be deemed to be an offer by the Customer to purchase the Deliverables subject to these Conditions.
- 2.5 These Conditions shall become binding on the Customer when they are signed by the Customer, or if they are not signed, when the Supplier:
 - (a) acknowledges the order placed by the Customer in writing;
 - (b) commences processing of the order and/or provision of the Deliverables; or
 - (c) notifies the Customer that the Deliverables are ready;whichever is the earlier, at which point a **“Contract”** shall come into existence between the Supplier and the Customer.

- 2.6 The Supplier is under no obligation to accept any order, and no order shall be regarded as having been accepted by the Supplier, unless the circumstances set out in Condition 2.5 apply.
 - 2.7 The Supplier may cancel an order, at any time on the provision of written notice to the Customer at any point before commencing work on the Deliverables. The Supplier shall not be liable to the Customer in relation to any loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Customer as a result of cancellation. Where the Supplier confirms the details of the Contract in writing, the Customer shall be under a duty to bring any discrepancies to the Supplier's notice within 3 days of receipt of the written confirmation, and if the Customer fails to bring any such discrepancies to the Supplier's notice within the said time period, the Customer shall be bound by the details contained mentioned or referred to in the written confirmation of the Contract.
 - 2.8 The Supplier's employees or agents are not authorised to make any representations concerning the Deliverables unless confirmed by the Supplier in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed save that nothing in this Condition excludes the Supplier's liability for fraudulent misrepresentation.
 - 2.9 In the event that the Customer wishes to cancel an order, it may only do so with the written consent of a director of the Supplier and on the terms that the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.
 - 2.10 Any typographical, clerical or other omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.
- ## 3. PRICE
- 3.1 The Price is inclusive of insurance costs, delivery, storage, installation and packaging.
 - 3.2 The Price and any Additional Charges are as stated in the Contract Details or the Supplier's current price list.
 - 3.3 The Supplier reserves the right to increase the Price and/or Additional Charges by giving written notice at any time prior to delivery in accordance with Condition 8.1 to take account of any increase howsoever arising in the Price and/or Additional Charges including but without being limited to any increase in the costs of materials, labour or delivery or to take account of any fluctuations in exchange rates, or alteration of duties as shall be reasonable in the circumstances provided that the Customer may cancel the Contract by notice in writing within 3 Working Days of the date of any such notice from the Supplier subject to the provisions of Condition 2.9.
 - 3.4 The Supplier reserves the right to charge the Customer, as an Additional Charge, for any additional work undertaken over and above that which would have been otherwise required, (including any expenses or financial penalties incurred by the Company) as a result of any instructions supplied by the Customer being incomplete, incorrect, inaccurate, illegible, out of sequence, in the wrong form, or provided to the Supplier too late to enable it to meet a deadline.

3.5 Unless otherwise stated in writing, the Price quoted is inclusive VAT but exclusive of any other sales tax which will be charged at the rate in force at the time of despatch.

3.6 Where set out in the Contract Details, the Customer shall reimburse all reasonable expenses properly and necessarily incurred by the Supplier in the course of the Contract, subject to production of receipts or other appropriate evidence of payment.

4. PAYMENT TERMS

4.1 The Supplier shall be entitled to invoice the Customer for the Price and where applicable any Additional Charges on or at any time after despatch of the Deliverables or any instalment thereof, or in accordance with the payment terms set out in the Contract Details. In the event that any Additional Charges arise following the issue by the Supplier of the invoice, the Supplier will invoice the Customer as and when the Additional Charges arise.

4.2 The Customer shall make payment for the Price and where applicable any Additional Charges in sterling by cheque or telegraphic transfer into such bank account as notified by the Supplier in writing from time to time. Unless agreed otherwise in writing any payment received by the Supplier in any other currency or by any other method will not be deemed to be payment for the Deliverables in question. Payment will not be deemed payment for the Deliverables in question unless and until it is received in full and in cleared funds.

4.3 The Customer shall pay each invoice from the Supplier without any set-off or other deduction within 30 days from the invoice date and, where applicable, shall pay the Supplier's expenses incurred in accordance with Condition 3.6 within 5 Working Days of the Supplier's request for such payment ("Due Date").

4.4 The Supplier's invoices shall be payable in accordance with this Condition 4, notwithstanding that delivery of the Deliverables may not have taken place and title may not have passed to the Customer. The time of payment of the Supplier's invoices shall be of the essence of the Contract.

4.5 If the Customer fails to pay in full any invoice from the Supplier by the Due Date or in any other way breaches the terms of this Contract without prejudice to any other right or remedy the Supplier may have:

(a) all invoices issued by the Supplier in respect of any Deliverables sold or supplied and any Additional Charges pursuant to this Contract and any sums due for goods and/or services under any other contract which may exist between the parties shall immediately fall due for payment; and

(b) the Supplier shall be entitled to:

(i) cancel or suspend any further deliveries of Deliverables to the Customer under any order;

(ii) sell or otherwise dispose of the Deliverables and/or any goods which are the subject of any order by the Customer, whether or not appropriated thereto, and, where applicable, apply the proceeds of sale to the Unpaid Amount;

(iii) where applicable, charge the Customer interest (both before and after any judgment) on the Unpaid Amount, at the rate in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended from time to time, which is currently 8% above the Bank of England's basic rate, 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 judgement;

(iv) appropriate any payment made by the Customer to such of the Deliverables (or good and/or services supplied under any other order) as the Supplier may think fit; and

(v) by notice to the Customer unilaterally vary payment terms for future Contracts;

(c) the Customer shall indemnify the Supplier for all reasonable Costs that are reasonably incurred by the Supplier (either directly or by a third party) including disbursements, VAT and other expenses that are reasonably incurred by the Supplier (either directly or indirectly or by a third party) in seeking or securing payment of any Unpaid Amount or otherwise pursuing any claim for damages for breach of this Contract. This indemnity shall apply whether or not the Customer has been negligent or at fault. For the avoidance of doubt, the limitations set out in Condition 12, do not apply to the indemnity in this Condition 4.5(c).

4.6 Unless otherwise agreed in writing by the Supplier, all queries from the Customer regarding any invoice must be received prior to the Due Date.

5. DELIVERABLES

5.1 The Deliverables are as described in the specification set out in the Contract Details and for the avoidance of doubt exclude:

(a) the removal of existing cabling or ancillary components, unless otherwise agreed in writing;

(b) the supply and/or installation of fire stopping; and

(c) all building works, re-decoration and/or reinstatement.

5.2 Where any design is applied to the Deliverables either at the Customer's request or to the Customer's specification, the Customer shall indemnify the Supplier against all loss, damages, costs and expenses awarded against or incurred by the Supplier in connection with or paid or agreed to be paid by the Supplier in settlement of any claim for infringement of any Intellectual Property Rights of any person which results from the Supplier's use of the Customer's specification.

5.3 Acceptance of any design applied to the Deliverables in accordance with Condition 5.2 shall take place in accordance with the provisions set out in the Contract Details.

6. CHANGES TO THE DELIVERABLES

6.1 The Customer and the Supplier shall meet as and when deemed reasonably necessary by the Supplier to discuss matters relating to the Deliverables. If either party wishes to change the scope or execution of the Deliverables, it shall submit details of the requested change to the other in writing.

6.2 If either party requests a change to the scope or execution of the Deliverables, the Supplier shall, within a reasonable time, and where reasonably practicable, provide a written estimate to the Customer of:

(a) the likely time required to implement the change;

(b) any variations to the Price arising from the change;

(c) the likely effect of the change on the Contract Details; and

(d) any other impact of the change on the Conditions.

6.3 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and

until the parties have agreed in writing on the necessary variations to the Price and the Contract Details.

- 6.4 The Supplier may, from time to time and without notice, change the Deliverables in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the Price for the Deliverables.

7. RISK AND TITLE

- 7.1 Risk of damage to or loss of the Deliverables shall pass to the Customer at the time of delivery to the Delivery Location, save in the following situations:

- (a) if the Customer wrongfully fails to take delivery, risk shall pass to the Customer at the time when the Supplier has tendered delivery of the Deliverables; or
- (b) if delivery is to a location outside the United Kingdom, then risk shall pass in accordance with the Contract Details or as otherwise agreed in writing between the parties.

- 7.2 Notwithstanding delivery and the passing of risk in the Deliverables, or any other provision of these Conditions, title in the Deliverables shall not pass to the Customer until the Supplier has received in cash or cleared funds payment in full of:

- (a) the Price and any Additional Charges; and
- (b) all other sums payable by the Customer to the Supplier for which payment is then due.

- 7.3 Until such time as title in the Deliverables passes to the Customer:

- (a) the Customer shall hold the Deliverables as the Supplier's fiduciary agent and bailee, and shall keep the Deliverables separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Supplier's property, but shall be entitled to resell or use the Deliverables in the ordinary course of its business;
- (b) if Deliverables are damaged or destroyed by an insured risk prior to the same being paid for by the Customer, the Customer shall receive the proceeds of any such insurance as trustee for the Supplier;
- (c) the Supplier shall be entitled at any time to require the Customer to deliver up the Deliverables to the Supplier and if the Customer fails to do so forthwith, to enter upon any premises of the Customer or third party where the Deliverables are stored and mark identify and repossess the Deliverables and the Customer grants the Supplier an irrevocable license to enter any premises of the Customer for such purposes; and
- (d) the Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Deliverables which remain the property of the Supplier, but if the Customer does so all monies owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.

8. DELIVERY

- 8.1 The Supplier shall reasonably endeavour to deliver the Deliverables on the Anticipated Delivery Date to the Delivery Location (which may include digital delivery to an agreed platform or network), subject to the availability of the Supplier's employees, agents and sub-contractors and the availability and delivery of the Deliverables. The time for delivery shall not be of the essence.

- 8.2 The Supplier shall only be required to deliver the Deliverables during Normal Working Hours.

- 8.3 The Supplier shall have the right to deliver Deliverables ordered in instalments.

- 8.4 In the event that the Supplier is unable for any reason to fulfil any delivery of the Deliverables on any Anticipated Delivery Date the Supplier shall not be deemed to be in breach of contract or have any liability to the Customer. Failure by the Supplier to deliver any one or more of the instalments on any Anticipated Delivery Date or any claim by the Customer in respect of the Deliverables delivered in any one or more instalments shall not entitle the Customer either to treat the Contract as a whole as repudiated or to reject or refuse to take delivery of any of the Deliverables delivered in any other instalment.

- 8.5 If the Customer fails to take delivery of the Deliverables within 3 Working Days of the Supplier notifying the Customer that the Deliverables are ready (otherwise than by reason of the Supplier's fault) or fails to give the Supplier adequate instructions for delivery then, without prejudice to any other right or remedy available to the Supplier and where applicable due to the nature of the Deliverables:

- (a) delivery of the Deliverables shall be deemed to have been completed at 9.00 am on the third Working Day following the day on which the Supplier notified the Customer that the Deliverables were ready and the Customer shall be entitled to invoice the Customer for the Price under Condition 4.2; and
- (b) the Supplier may:
 - (i) store the Deliverables until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage and redelivery; or
 - (ii) sell the Deliverables at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Customer for any shortfall below the Price and any Additional Charges under the Contract.

- 8.6 The Customer shall notify the Supplier in writing to the person identified in the Contract Details of any shortfall of Deliverables delivered within 7 Working Days of delivery, or in the event of any non-delivery, within 2 Working Days of the Anticipated Delivery Date. The Supplier shall be entitled to make good any shortage or non-delivery of Deliverables. Where it does not do so, it shall notify the Customer in writing of its decision and the Price may be adjusted on a pro-rata basis.

- 8.7 Upon delivery the Customer will be required to sign the Supplier's, or the Supplier's carrier's, delivery note as conclusive evidence that delivery was made and of the quantity of Deliverables received by the Customer. Where the Deliverables are in a digital format, the Customer shall confirm delivery by way of email to the Supplier.

9. ACCEPTANCE

- 9.1 Acceptance of the Deliverables shall take place upon the final sign off of the Deliverables in accordance with Condition 5.3 or upon the use of the Deliverables by the Customer, whichever is the soonest to occur.

10. CUSTOMER OBLIGATIONS

- 10.1 The Customer warrants that:

- (a) it will co-operate with the Supplier in all matters relating to the Deliverables;

- (b) it will provide, for the Supplier, its employees, agents and sub-contractors, in a timely manner and at no charge, access to the Delivery Location as requested by the Supplier and as necessary to enable the Supplier to perform its obligations under these Conditions;
- (c) it will provide, in a timely manner, such Input Materials as the Supplier may request and ensure that it is accurate in all material respects;
- (d) it will carry out all actions specified in the Contract Details by the times and dates set out therein;
- (e) it will provide suitable facilities at the Delivery Location inclusive of reasonable consumable utilities and facilities, including, without limitation, suitable power supplies and suitable welfare/messing facilities;
- (f) it will provide a sustainable secure location for a storage container on or adjacent to the Delivery Location;
- (g) it will provide such free and easy access to the Delivery Location as reasonably required by the Supplier;
- (h) it shall take all reasonable precautions to ensure the health and safety of the Supplier, its employees, agents, or sub-contractors whilst on the Delivery Location and will inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Delivery Location; and
- (i) it will obtain before the date on which the Deliverables are to start and maintain all necessary licenses and consents and comply with all relevant legislation in relation to the Deliverables and the use of the Input Materials.

10.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, the Supplier shall not be liable for any costs, expenses, losses or charges sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

10.3 Notwithstanding the provisions of Condition 10.2, the Supplier may charge the Customer as an Additional Charge for any additional reasonable costs and expenses incurred by the Supplier caused by the Customer's instructions, failure to provide instructions, or failure to comply with Condition 10.1.

11. RESTRICTIONS

11.1 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of 12 months after the termination of the Contract, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier in the provision of the Deliverables.

11.2 Any consent given by the Supplier in accordance with Condition 11.1 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee or sub-contractor.

12. WARRANTY

12.1 Where the Supplier is not the manufacturer of the Deliverables, the Supplier shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given to the Supplier.

12.2 Subject to the Conditions set out below the Supplier warrants that upon acceptance in accordance with Condition 9, and for

a period of 12 months from the date of acceptance, the Deliverables will:

- (a) be free from material defects in quality or workmanship; and
- (b) comply with any specification set out in the Contract Details. For the avoidance of doubt the Supplier may from time to time make changes in the specification of the Deliverables which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality of the Deliverables; and
- (c) be performed by the Supplier with reasonable care and skill subject to the Customer complying with the obligations set out in Condition 10.1;

for the avoidance of doubt the warranty set out in this Condition 12.2 shall not extend to cover any deliverables not manufactured, designed, programmed or created by the Supplier for which Condition 12.1 shall apply.

12.3 Subject as expressly provided in these Conditions, all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. In particular, the Supplier makes no warranty as to the fitness of the Deliverables for any particular purpose even if that purpose is stated in the Customer's order. This exclusion includes recommendations or advice from the Supplier to the Customer relating to a specific enquiry. The Customer must satisfy itself as to the fitness for the purpose for which the Deliverables are intended.

12.4 The Supplier shall not be liable for a breach of any of the warranties in Condition 12.2 unless:

- (a) the Customer gives written notice of the defect during the warranty period to the person identified in the Contract Details and if, where the Supplier is responsible for delivery, the defect is as a result of damage in transit gives written notice to the Supplier or the Supplier's carrier within 2 Working Days of receipt specifying the details of the defect and delivery date. In the event of a defect which is not apparent on delivery the Customer shall inform the Supplier of such defect immediately on discovery of the defect but in any event within 7 Working Days of delivery; and
- (b) the Supplier is given a reasonable opportunity after receiving the notice of examining the Deliverables and the Customer complies with any request from the Supplier to return Deliverables to the Supplier's place of business at the Customer's cost for examination to take place there.

12.5 The Supplier shall not be liable for breach of warranty under Condition 12.2 if:

- (a) the Customer makes any further use of such Deliverables after giving notice under Condition 12.4; or
- (b) the defect arises because the Customer has failed to follow the Supplier's or manufacturer's instructions (whether oral or in writing) as to the storage, installation, commissioning, proper use and maintenance of the Deliverables or (if there are none) good trade practice; or
- (c) the Customer alters or repairs the Deliverables without the written consent of the Supplier.

12.6 Where any valid claim in respect of the Deliverables is made by the Customer the Supplier shall be entitled at its option to:

- (a) replace, or repair or correct the Deliverables (or the part in question) found not to conform to warranty at the Supplier's cost;

- (b) re-perform the relevant part of the Deliverables found not to conform to warranty at the Supplier's cost; or
- (c) at the Supplier's sole discretion, refund to the Customer the Price (or a proportionate part of the Price) of the relevant part of the Deliverables found not to conform to warranty,

and subject to Condition 16.3 the Supplier shall have no further liability to the Customer.

12.7 Any claim by the Customer under this Condition 12 in respect of any Deliverables shall not entitle the Customer to withhold or delay payment in respect of any other Deliverables in respect of which no such claim has been made whether or not those Deliverables form part of the same consignment.

13. INTELLECTUAL PROPERTY RIGHTS

13.1 The Customer acknowledges that the Supplier is the owner or the licensee of all Intellectual Property Rights in the Deliverables. Under no circumstances shall any of the Intellectual Property Rights transfer to the Customer other than as expressly stated within these Conditions and/or the Contract Details.

13.2 The Supplier grants to the Customer a non-exclusive licence (without the right to sub-licence) to use any Intellectual Property Rights in the Deliverables for the purpose of making reasonable use of the Deliverables.

13.3 The Customer shall provide the Input Materials to the Supplier for the purpose of the provision of Deliverables and shall grant to the Supplier a non-exclusive licence to use any Input Materials for the purpose of providing the Deliverables.

13.4 The Customer shall indemnify and hold the Supplier harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by, the Supplier as a result of or in connection with any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use of the Input Materials.

13.5 The Customer shall indemnify and hold the Supplier harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by; the Supplier as a result of or in connection with any claim made against the Supplier in respect of any liability, loss, damage, injury, cost or expense sustained by the Supplier, or the Supplier's employees or agents or by any third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the use of the Deliverables as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of this Contract by the Customer.

14. PROTECTION OF CONFIDENTIAL INFORMATION

14.1 Each party ("**Receiving Party**") shall keep the Confidential Information of the other party ("**Supplying Party**") confidential and secret, the Receiving Party shall only use the Confidential Information of the Supplying Party as necessary in relation to the supply of the Deliverables (in the case of the Supplier) or as necessary for the purpose of making reasonable use of the Deliverables (in the case of the Customer) and for performing the Receiving Party's obligations under the Contract. The Receiving Party shall inform its officers, employees and agents of the Receiving

Party's obligations under the provisions of this Condition 14, and ensure that they meet such obligations.

14.2 The obligations of Condition 14.1 shall not apply to any information which:

- (a) was known or in the possession of the Receiving Party before it was provided to the Receiving Party by the Supplying Party;
- (b) is, or becomes, publicly available through no fault of the Receiving Party;
- (c) is provided to the Receiving Party without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;
- (d) was developed by the Receiving Party (or on its behalf) without direct access to, or use or knowledge of the Confidential Information supplied by the Supplying Party; or
- (e) is required to be disclosed by order of a court of competent jurisdiction.

14.3 This Condition 14 shall survive termination of the Contract.

15. DATA PROTECTION

15.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Condition 15 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this Condition 15, "**Applicable Laws**" means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and "**Domestic UK Law**" means any Data Protection Legislation and any other law that applies in the UK.

15.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.

15.3 Without prejudice to the generality of Condition 15.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Contract.

15.4 Without prejudice to the generality of Condition 15.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Contract:

- (a) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (b) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- (c) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data.

16. LIMITATION OF LIABILITY

16.1 Subject to Condition 16.3, the Supplier's total aggregate liability to the Customer in respect of any direct loss (whether in contract, tort or otherwise) shall not exceed 10% of the Price.

16.2 The Supplier shall have no liability in respect of any:

- (a) Loss of profits.
- (b) Loss of sales or business.
- (c) Loss of agreements or contracts.
- (d) Loss of anticipated savings.
- (e) Loss of use or corruption of software, data or information.
- (f) Loss of or damage to goodwill.
- (g) Indirect or consequential loss.

16.3 Nothing in these Conditions seeks to limit the Supplier's liability for personal injury or death caused by the Supplier's negligence in respect of which the Supplier's liability shall be unlimited.

16.4 Subject to Condition 16.3, the Supplier shall have no liability under these Conditions or otherwise if the Deliverables have not been paid for by the Due Date.

16.5 The Customer shall indemnify and hold the Supplier harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by; the Supplier as a result of or in connection with any claim made against the Supplier in respect of any liability, loss, damage, injury, cost or expense sustained by the Supplier, or the Supplier's employees or agents or by any third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the use of the Deliverables as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of this Contract by the Customer.

17. TERMINATION AND CONSEQUENCES

17.1 Without prejudice to any other remedies or rights whether under the Contract or otherwise, the Supplier may terminate

the Contract at any time by written notice to the Customer and the notice taking effect as specified in the notice if:

- (a) the Customer commits a material or persistent breach of any of these Conditions, and (if such a breach is remediable), fails to remedy that breach within 30 days, or such other time period deemed appropriate by the Supplier at the time, of being notified in writing;
- (b) the Customer fails to pay any sum due by the Due Date, including any interest accrued, in full cleared funds in accordance with Condition 4 within 60 days of the Due Date, or such other time period deemed appropriate by the Supplier at the time, of being notified in writing;
- (c) the Customer suspends, or threatens to suspend, payment of its debts or makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction);
- (d) a creditor or encumbrancer 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 any property or assets of the Customer;
- (e) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (f) the Supplier reasonably apprehends that any of the events mentioned above is about to occur and notifies the Customer accordingly.

17.2 For the purposes of Condition 17.1(a), a breach shall be considered capable of remedy if the Customer can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

17.3 Upon termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all outstanding invoices, and in respect of any part of the Price and Additional Charges or other sums payable by the Customer but for which no invoice has been submitted, the Supplier may submit an invoice which shall be payable immediately on receipt;
- (b) each party shall return, delete or destroy all Confidential Information and all other information which has been provided to it by the other party belonging to that other party in whatever medium in accordance with the instructions of that other party;
- (c) any licence granted by these Conditions shall terminate, in particular those granted under Condition 13; and
- (d) the accrued rights and remedies of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

18. FORCE MAJEURE

18.1 The Supplier shall not be liable to the Customer or be deemed to be in breach of this Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Contract, if the delay or failure was due to any cause beyond the Supplier's reasonable control such as (but without limitation) any strike, lock-out or other form of industrial action, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or government

order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors or inability to procure materials required for performance of the Contract.

18.2 The Supplier shall promptly notify the Customer in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 1 month, the Supplier may terminate the Contract by written notice to the Customer.

19. NOTICES

19.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Any notice:

- (a) sent by post shall be deemed served on the next Working Day following posting where the notice is sent and received within the United Kingdom, or 7 Working Days following posting where the notice is sent and/or received outside of the United Kingdom;
- (b) delivered personally shall be deemed served at the time of personal delivery, provided the same occurs on a Working Day; and
- (c) sent by email shall be deemed served at the time of transmission provided that the transmission occurs on a Working Day and a confirmatory copy of the email is sent by post within 24 hours of transmission of the email.

19.2 To prove service it shall be sufficient to show that the email was transmitted to the email address of the other party or that the envelope containing the notice was properly addressed and posted.

20. ENTIRE AGREEMENT

20.1 Each Contract constitutes the entire agreement between the parties in relation to its subject matter, supersedes any previous agreement or understanding and may not be varied except in writing between the parties. All other terms and conditions express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

21. NO PARTNERSHIP OR AGENCY

21.1 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for or to bind another party in any way.

22. FURTHER ASSURANCE

22.1 Each party to the Contract shall at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of the Contract or to make it easier to enforce.

23. ASSIGNMENT

23.1 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any manner with all or any of its rights or obligations under the Contract.

24. SEVERANCE

24.1 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions shall remain in full force and effect.

25. WAIVER

25.1 A waiver of any right or remedy under the Contract 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 the Supplier 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

26. CUMULATIVE REMEDIES

26.1 All rights and remedies available to either of the parties under the terms of the Contract or under the general law are to be cumulative, and no exercise by either of the parties of any such right or remedy is to restrict or prejudice the exercise of any other right or remedy granted by the Contract or otherwise available to that party.

27. THIRD PARTY RIGHTS

27.1 A person who is not a party to the Contract will not have any rights under any term of the Contract.

28. MEDIATION

28.1 If any dispute arises in connection with the Contract, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties within 14 Working Days of notice of the dispute, the mediator will be nominated by CEDR.

29. GOVERNING LAW AND JURISDICTION

29.1 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, English law, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England.