

## THE SALVATION ARMY TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS & SERVICES (“TERMS & CONDITIONS”)

This Contract is made between:

- 1) **THE SALVATION ARMY TRUSTEE COMPANY** a company registered in England and Wales under company number 00259322 of 101 Newington Causeway, London SE1 6BN, acting firstly in its capacity as trustee of The Salvation Army Trust (Central Funds) Trust registered charity number 214779 and in Scotland No. SC009359 and secondly in its capacity as trustee of The Salvation Army Social Work Trust registered charity number 215174 and in Scotland no. SC037691 (“**The Customer**”), and
- 2) the supplier described in the Purchase Order (“**The Supplier**”).

### 1 Definitions and Construction

In this Contract, the following definitions and rules of interpretation apply:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England;  
**Commencement Date:** the commencement of this Contract as noted on the Purchase Order;  
**Contract:** the contract formed between the Customer and the Supplier comprising the Purchase Order and these Terms & Conditions;  
**Contract Price:** the price payable pursuant to this Contract in consideration for the applicable Goods and/or Services as noted on the Purchase Order;  
**Customer Materials:** all materials, equipment, tools, keys, drawings, specifications, data (including Personal Data), cabling or facilities belonging to and/or supplied by the Customer and used directly or indirectly in the supply of the Goods and/or the Services;  
**Data Protection Laws:** includes the DPA, the EU Data Protection Directive 95/46/EC, GDPR, the Investigatory Powers Act 2016, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 as amended and all applicable laws and regulations (including local) relating to processing of personal data and privacy, including as applicable the guidance and codes of practice issued by the Information Commissioner (ICO) or other relevant supervisory authority, all as amended, replaced or superseded from time to time;  
**Deliverables:** all documents, products and materials developed by, and/or supplied by the Supplier or its agents, and employees as part of or relating to the Services in any form or media, including relevant parts, equipment components, drawings, plans, diagrams, designs, pictures, computer programs, data (including Personal Data), specifications, management information and reports (including drafts);  
**Delivery Note:** a document showing the date of the Purchase Order, any Order number, the type/quantity of Goods (including the code number of the Goods (where applicable)), any special storage instructions and, if the Goods are being delivered by instalments, the outstanding balance of Goods still to be delivered;  
**DPA:** The Data Protection Act 2018 as amended and replaced;  
**EIRs:** the Environmental Information Regulations 2004 together with any regulatory requirements, guidance and/or codes of practice all;  
**FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under it from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation and “Information” has the meaning in section 84 of FOIA;  
**GDPR:** the European Union General Data Protection Regulation (2016/679);  
**Goods:** the goods specified by the Customer in the Purchase Order;  
**Group Company:** in relation to any company, any body corporate which is from time to time a holding company of that company, a subsidiary of that company or a subsidiary of a holding company of that company (which expressions shall have the meanings attributed to them in Companies Act 2006);  
**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;  
**Location:** the premises specified on the Purchase Order;  
**Losses:** any liabilities, costs, monies, expenses, fines, penalties, sanctions, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of donations, loss of legacy income, loss of revenue, loss of charitable earnings, wasted expenditure, amounts paid in settlement, and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional fees and expenses);  
**PQQ:** the Customer’s Pre-Qualification Questionnaire template as prepared, completed and provided by the Supplier to the Customer in order for the Customer to determine that the Supplier is able to comply with its obligations under this Contract and is a supplier who meets the Customer’s requirements for suppliers with whom the Customer may conduct its business as set out in the Customer’s procurement policies applicable from time to time;  
**Purchase Order:** the Customer’s form of purchase order signed by the parties comprising the Customer’s order(s) for the supply of Goods and/or Services as applicable;  
**Request for Information:** a request or apparent request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;

**Services:** the services and/or works, including any Deliverables, to be provided by the Supplier under this Contract as specified in the PQQ, Purchase Order, Tender Documents and/or any Specification or as notified by the Customer writing;  
**Service Levels:** the service levels and requirements for the provision of the Services as specified in the Purchase Order or agreed between the parties in writing;  
**Specification:** the description or specification for Services agreed in writing by the Customer and the Supplier and attached to or contained in the Purchase Order and which, for reactive repairs services, shall include defect diagnosis and advice and specifications of required repairs;  
**Subcontract:** any actual or proposed contract or agreement between the Supplier and any third party whereby the Supplier subcontracts the performance of all or any part of its obligations under this Contract;  
**Subcontractor:** any third party which enters into a Subcontract with the Supplier;  
**Supplier Personnel:** means all employees, staff, contractors, consultants, agents, officers and workers of the Supplier and the Subcontractor engaged in the provision of the Services;  
**Tender Documents:** any invitation to tender issued by the Customer and all responses and proposals provided by the Supplier;  
**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced from time to time; and  
**VAT:** value added tax as charged under the Value Added Tax Act 1994.

- 1.1.1 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted and includes any subordinate legislation made under it, as amended or re-enacted;
- 1.1.2 any phrase introduced by the terms **including**, **include(s)**, **in particular** or any similar expression shall be construed as illustrative and not in any way exhaustive and shall not limit the sense of the words preceding, succeeding, or in any way linked to those terms;
- 1.1.3 in the event of any conflict or inconsistency between these Terms & Conditions and the Purchase Order, these Terms & Conditions shall prevail to the extent of such conflict or inconsistency;
- 1.1.4 references in these Terms & Conditions to **compliance with all applicable laws, statutory and regulatory requirements and/or industry standard and practice** shall include all such local laws and regulations and those of the relevant jurisdiction for the provision of the Goods and/or Services; and
- 1.1.5 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

### 2 BASIS OF CONTRACT

- 2.1 In accordance with these Terms & Conditions, the Supplier shall supply and the Customer shall purchase such Goods and/or Services as the Customer may order under a Purchase Order. In consideration for the Goods and/or Services as applicable, the Customer shall pay the Contract Price.
- 2.2 The Supplier shall provide the Services in accordance with any Specification, PQQ, Tender Documents and instructions of or on behalf of the Customer.
- 2.3 The parties agree that:
  - 2.3.1 these Terms & Conditions shall apply to this Contract to the exclusion of any other terms that the Supplier may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing and the Customer shall deal with the Supplier on the terms of these Terms & Conditions;
  - 2.3.2 acceptance by the Customer of the Supplier’s contractual performance does *not* imply acceptance of any terms that are different to these Terms & Conditions;
  - 2.3.3 any new terms or changes introduced by any other method by the Supplier shall be void and of no legal force or effect and any receipt or acknowledgement by the Customer of any such other terms shall not constitute the Customer’s agreement to any terms other than those specified in this Contract; and
  - 2.3.4 any variation to these Terms & Conditions shall only be valid in accordance with clause 27.7 comprising express consent signed by a director of the Customer.
- 2.4 The Supplier shall indemnify, keep indemnified and hold harmless the Customer in full and on demand against all Losses howsoever caused or incurred as a result of the Supplier seeking to rely on any contractual terms, or on any statement, understanding or representation which does not comprise part of this Contract and which has not been agreed pursuant to clause 27.7.
- 2.5 These Terms & Conditions shall apply to the supply of both Goods and Services as applicable.
- 2.6 The parties acknowledge and agree that:
  - 2.6.1 the supply of Goods or Services under this Contract is not an exclusive arrangement;
  - 2.6.2 the Customer may purchase goods and services from any third party that are the same as, or comparable to, the Goods or Services;
  - 2.6.3 nothing in this Contract shall constitute a guarantee or commitment as to the volumes or value of the Goods or Services to be purchased by the Customer; and
  - 2.6.4 the Supplier may supply goods or services to any third party that are the same as, or comparable to, the Goods or Services.

**3. DURATION**

This Contract is a one-off contract for the purchase of the Goods or Services specified in the Purchase Order and shall commence on the Commencement Date and continue in force until the Supplier has completed performance of the Services or delivery of the Goods, as applicable. The Contract shall take effect as binding on the parties from the date of signature by both parties of the Purchase Order.

**4. SUPPLY OF GOODS**

- 4.1 The Supplier shall ensure that the Goods shall:
  - 4.1.1 correspond with their description and any applicable Specification;
  - 4.1.2 be of satisfactory quality (according to 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;
  - 4.1.3 be free from defects in design, materials and workmanship and remain so for twelve (12) months after delivery;
  - 4.1.4 comply with all applicable statutory and regulatory requirements relating to the supply, manufacture, labelling, packaging, storage, handling and/or delivery of the Goods; and
  - 4.1.5 Goods sold by reference to a sample will correspond with the sample.
- 4.2 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 this Contract in respect of the Goods.
- 4.3 The Supplier shall comply with all applicable laws, regulations, codes of practice and other instruments relating to the supply, labelling, manufacture, packing, packaging, marking, storage, handling and delivery of the Goods.
- 4.4 The Customer may inspect and/or test the Goods before delivery.
- 4.5 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with this Contract and informs the Supplier of this, the Supplier shall immediately take such remedial action as is necessary to ensure compliance with this Contract.
- 4.6 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 this Contract. The Customer shall, without prejudice to its rights and remedies under this Contract, have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 4.7 The Supplier warrants that it has full clear and unencumbered title to the Goods and at the date of delivery, it shall have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to the Customer.

**5 DELIVERY OF GOODS**

- 5.1 The Supplier shall ensure that:
  - 5.1.1 all Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
  - 5.1.2 each delivery of the Goods is accompanied by a Delivery Note; and
  - 5.1.3 if the Supplier requires the Customer to return any packaging material for the Goods, that fact is clearly stated on the Delivery Note and such return of packaging material shall be at the Supplier's cost.
- 5.2 The Supplier shall deliver the Goods:
  - 5.2.1 on the date specified in the Purchase Order or, if no such date is specified, then within five (5) Business Days of the date of the Purchase Order;
  - 5.2.2 to the Delivery Location; and
  - 5.2.3 during the Customer's normal hours of business on a Business Day, or as otherwise instructed by the Customer.
- 5.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location, and the provision of Delivery Note for the applicable Purchase Order once signed by the Customer.
- 5.4 If the Supplier:
  - 5.4.1 delivers less than ninety-five per cent (95%) of the quantity of Goods ordered at any one time and as specified in the applicable Order, the Customer may reject the Goods; or
  - 5.4.2 delivers more than one hundred and five per cent (105%) of the quantity of Goods ordered at any one time and as specified in the applicable Order, the Customer may reject all of 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, a pro rata adjustment as applicable shall be made to the invoice by the Supplier.
- 5.5 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where this consent is given, the Supplier may invoice for each instalment separately. 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 8.
- 5.6 Title to and risk in the Goods shall both pass to the Customer on completion of delivery of the Goods to the Customer's possession at the Delivery Location. At the point of delivery of the Goods, the Customer shall acquire a valid and unencumbered title to the Goods.

**6 CANCELLATION**

- 6.1 The Customer may at any time cancel the whole or any part of the Purchase Order for Goods which have not yet been delivered. Without limiting any other rights and remedies of the Customer, the Customer shall in this case pay a proportionate Contract Price for the Goods as specified in the Purchase Order which have been delivered or are in transit to it at the date/time of cancellation.

- 6.2 If the Goods specified in the Purchase Order are not delivered on the delivery date specified in the Purchase Order then without limiting any other rights or remedies of the Customer, the Customer may refuse to take any subsequent attempted delivery of the Goods. Further, the Customer may obtain substitute products from another supplier and recover from the Supplier any costs and expenses reasonably incurred by the Customer in doing so.

**7 SUPPLY OF SERVICES**

- 7.1 The Supplier shall from the Commencement Date provide the Services to the Customer in accordance with these Terms & Conditions.
- 7.2 Time shall be of the essence in respect of the commencement and provision of the Services. The Supplier shall meet any commencement, implementation and/or performance dates for the Services specified in each applicable Purchase Order and/or as notified to the Supplier by the Customer from time to time.
- 7.3 In providing the Services, the Supplier shall:
  - 7.3.1 comply with all applicable laws, statutory and regulatory requirements and all codes of practice relating to the Services;
  - 7.3.2 co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
  - 7.3.3 perform the Services with the best care, skill and diligence in accordance with best practice and applicable standards in the Supplier's industry, profession or trade;
  - 7.3.4 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;
  - 7.3.5 ensure that the Services and Deliverables 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;
  - 7.3.6 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - 7.3.7 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;
  - 7.3.8 obtain and at all times maintain all necessary licences, authorities, consents and permissions, and comply with all applicable laws and regulations;
  - 7.3.9 observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
  - 7.3.10 comply with all of the Customer's policies applicable to any access to the Customer's premises by the Supplier, its employees, agents or Subcontractors;
  - 7.3.11 hold all Customer Materials in safe custody at its own risk, maintain them in good condition until returned to the Customer, and not dispose or use them other than in accordance with the Customer's written instructions or authorisation; and
  - 7.3.12 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 activities, and the Supplier acknowledges that the Customer may rely or act on the Services.
- 7.4 The Supplier shall provide all Deliverables to the Customer prior to the completion of the Services and shall further provide all management and administration including appointment booking, communication, reports and invoicing and management information (as may be required by the Customer from time to time) and as required for the Services and which shall be inclusive of the Contract Price.
- 7.5 The Supplier shall ensure all of the Supplier's personnel (including any Subcontractors) attending at the Customer's premises have met all applicable criteria for government criminal record disclosure and background checks as required according to the local law applicable to the relevant premises from time to time.
- 7.6 The Supplier shall:
  - 7.6.1 employ or engage in and about the provision of the Services only persons who are careful, honest, skilled, competent and experienced in the work they are to perform;
  - 7.6.2 ensure that every member of the Supplier Personnel engaged by the Supplier in and about the provision of the Services is and at all times remains properly and sufficiently trained, skilled and instructed with regard to the rules, procedures and statutory and regulatory requirements concerning health and safety at work and all other rules and procedures relevant to the duties which that person has to perform;
  - 7.6.3 ensure that the Supplier Personnel comply with all relevant rules, codes, policies, procedures and standards of the Customer which are current or which may be notified to the Supplier by Customer from time to time and with all relevant statutes, statutory orders and regulations;
  - 7.6.4 ensure Supplier Personnel do not in any circumstances accept any gratuity, tip or other form of money, taking or reward, collection or charge from any person in connection with the provision of the Services;
  - 7.6.5 implement such Supplier Personnel training schemes as are necessary to ensure the proper performance of the Services;
  - 7.6.6 ensure that the Supplier Personnel have been appropriately selected taking into account the nature of the Service and Premises and all the

necessary and relevant background checks have been completed prior to the Supplier Personnel commencing work at any Premises;

7.6.7 ensure that the Supplier Personnel have the right to work in the United Kingdom and have passed all relevant pre-employment checks (including employment history, criminal convictions, reference checks and address verification) prior to Personnel commencing work; and

7.6.8 ensure the Supplier Personnel are of good character, honest, courteous, suitable in capability, appearance and behaviour and have the requisite skill, competence, qualifications and experience for the efficient and safe performance of their duties in accordance with the Services..

## 8. CUSTOMER REMEDIES

8.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date or in compliance with its obligations under this Contract, the Customer shall, in its sole discretion and without limiting any of its other rights or remedies, have one or more of the following rights:

8.1.1 terminate this Contract with immediate effect by giving written notice to the Supplier;

8.1.2 refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;

8.1.3 recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;

8.1.4 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, have such sums refunded by the Supplier; and/or

8.1.5 claim damages for any Losses incurred by the Customer which are in any way attributable to the Supplier's failure.

8.2 If any Goods are not delivered by the applicable date, the Customer may, at its option, claim or deduct five per cent (5%) of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of twenty per cent (20%) of the total price of the Goods relating to the applicable Order. If the Customer exercises its rights under this clause, it shall not be entitled to any of the remedies set out in clause 8.1 in respect of the late delivery of the Goods.

8.3 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 4.2, then, without limiting the Customer's other rights or remedies, the Customer may exercise one or more of the following rights, whether or not it has accepted the Goods:

8.3.1 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;

8.3.2 terminate this Contract with immediate effect by giving written notice to the Supplier;

8.3.3 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;

8.3.4 refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

8.3.5 recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and

8.3.6 claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods under clause 4.2.

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

8.5 The Customer's rights under this Contract are in addition to, and not in any way exclusive of, its rights and remedies available by statute and/or common law.

## 9. CUSTOMER'S OBLIGATIONS

Subject to clause 8, the Customer shall subject to compliance with clause 7.3.10, provide the Supplier with reasonable access at reasonable times to any applicable Customer's premises for the purpose of providing the Services.

## 10. CHARGES AND PAYMENT

10.1 The Contract Price for the Goods and/or Services (as applicable) shall be inclusive of all other costs, unless otherwise agreed in writing by the Customer and shall be the full and exclusive remuneration of the Supplier. No extra charges shall be payable unless agreed in writing and signed by the Customer.

10.2 The Supplier shall invoice the Customer within thirty (30) Business Days of completion of the Services or delivery of the Goods as applicable. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order number.

10.3 The Customer shall pay the invoiced amounts comprising the Contract Price, or relevant part of it, within thirty (30) days of receipt of a correctly rendered and undisputed invoice to a bank account nominated in writing by the Supplier.

10.4 All sums payable by the Customer under this Contract are exclusive of amounts in respect of VAT. Where any taxable supply for VAT purposes is made under this Contract by the Supplier to the Customer, the Customer shall, following receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are properly applicable and 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.

10.5 If a party fails to make any payment due to the other party under this Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of two per cent (2%) per annum above Bank of England'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.

10.6 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and shall allow the Customer to inspect, and to enter the Supplier's premises during reasonable business hours to inspect such records at all reasonable times on request.

10.7 The Customer may without limiting its other rights or remedies, set off any liability of the Supplier owed to or due 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 this Contract.

## 11 INTELLECTUAL PROPERTY RIGHTS

11.1 In respect of the Goods and any goods that are transferred to the Customer as part of the Services under this Contract, including the Deliverables or in the products of the Services, or any part, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of their delivery of such items to the Customer, it will have full and unrestricted rights to sell and transfer them to the Customer.

11.2 The Supplier grants to the Customer an irrevocable, perpetual, royalty-free licence, with the right to sub-licence and assign, under all Intellectual Property Rights used by the Supplier or its Sub- contractors to provide the Goods or Services, for the purposes of the Customer receiving the Goods or Services. The Supplier warrants that it has obtained all necessary rights to enable it to grant this licence. The Supplier assigns to the Customer, with full title guarantee and free from all third party rights or encumbrances, all Intellectual Property Rights in the products of the Services, including the Deliverables.

11.3 The Supplier shall obtain waivers of all moral rights in the Deliverables, or in the products 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.

11.4 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 this Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 11.2.

11.5 The Supplier acknowledges that all Customer Materials and the Intellectual Property Rights in them, are the exclusive property of the Customer.

11.6 The Supplier acknowledges that all Customer Materials and the Intellectual Property Rights in them, and the rights in the Salvation Army name and Red Shield logo, are the exclusive property of the Customer. The Supplier shall not use the Salvation Army name, the Red Shield logo or any other trade marks of the Customer, without the Customer's prior written consent.

## 12 INDEMNITY AND LIABILITY

12.1 The Supplier shall indemnify, keep indemnified and hold harmless the Customer, in full and on demand against all Losses howsoever caused or incurred in connection with:

12.1.1 any claim for death, personal injury or damage to property arising out of or in connection with this Contract, (including defects in Goods) or any act, omission or negligence of the Supplier, its employees, directors, agents or Subcontractors;

12.1.2 this Contract, or breach of or delay or non-performance of this Contract (including defects in Goods) or any act, omission or negligence of the Supplier, its employees, agents or Subcontractors;

12.1.3 any claim for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with this Contract, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services and, or Deliverables, (as applicable); and

12.1.4 any damage to or loss of reputation or goodwill arising as a result of any breach of this Contract or any act, omission or negligence of the Supplier, its employees directors, agents or Subcontractors.

12.2 Nothing in this Contract shall exclude or limit either party's liability to the other for death or personal injury caused by negligence, or for liability in respect of fraud or fraudulent misrepresentation or for any other liability which cannot be excluded or limited by law.

12.3 For the avoidance of doubt, the Customer shall not, in any circumstances whatsoever under this Contract, be liable for any loss of anticipated profits or any indirect or consequential loss.

12.4 This clause 12 shall be without prejudice to any other right or remedy available to the Customer and shall survive the termination or expiry of this Contract.

## 13 INSURANCE

13.1 During the Term and for a period of six years thereafter, the Supplier shall maintain in force, with a reputable, regulated and authorised insurance company the following insurance to cover the liabilities that may arise under or in connection with this Contract and to the value specified for each insurance:

13.1.1 professional indemnity insurance to at least to the value of two million pounds (£2 million) per claim;

13.1.2 public liability insurance at least to the value of ten million pounds (£10 million) per claim; and

13.1.4 employers liability insurance at least to the value of ten million pounds (£10 million) per claim.

13.2 The Supplier shall at the Customer's request, promptly produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

**14 CONFIDENTIALITY**

14.1 A party (**receiving party**) shall keep in strict confidence: all information that relates to the business, affairs, operations, developments, trade secrets, personnel and suppliers, including all technical or commercial know-how, Intellectual Property Rights, specifications, inventions, processes or initiatives and Personal Data which are in each case of a confidential nature and have been disclosed pursuant to this Contract to it 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 (**collectively confidential information**).

14.2 The receiving party shall only disclose the disclosing party's 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 this Contract, and shall ensure that such employees, agents and Subcontractors enter into obligations with it which are equivalent to those set out in this clause.

14.3 The receiving party may also disclose the disclosing party's confidential information where such disclosure is required by law, by any governmental or regulatory authority or by a court of competent jurisdiction subject to the prior notification to the disclosing party to the extent reasonably possible.

14.4 This clause 14 shall survive termination or expiry of this Contract.

**15 TUPE INDEMNITY - (THE TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006)**

The parties do not believe that TUPE applies to this Contract, but in the event that it does, the Supplier shall be liable for and indemnify, keep indemnified and hold harmless the Customer in full and on demand against all Losses howsoever caused or incurred as a result of any application of TUPE in respect of this Contract or of the termination in whole or part of this Contract.

**16 STATUTORY REGULATIONS**

16.1 The Supplier shall comply with all applicable laws and regulations relating to this Contract, including any specific industry regulations or orders or codes of practice or those of any applicable jurisdiction (including where the Services are provided in Scotland, Northern Ireland, the Republic of Ireland or the Channel Islands, then any and all applicable local laws and regulations), and further shall do so at its own expense.

16.2 It is a fundamental condition of this Contract, not only that all technical specifications and manufacturing standards referred to or implied into this Contract are observed, but also that any machinery, tools, substances, components or equipment supplied or installed under this Contract shall so far as is reasonably practicable be so formulated, designed, constructed finished and packaged as to be safe and without risks to health. Further, if any conditions are necessary to ensure such safety and harmlessness in use, or any such machinery, tools, substances, components or equipment possess dangerous properties whether in use or otherwise, appropriate and conspicuous labels or other warnings will (so far as practicable) be affixed to or appear on every applicable item or container of such.

16.3 Where the Supplier carries out any Services on the Customer's premises, the Supplier shall take all reasonable steps to ensure that those premises (so far as within his control) and any consequent works are at all times safe and without risks to the health of its own employees and of all other persons.

**17 DISCRIMINATION**

The Supplier shall not discriminate within the meaning and scope of any law or regulation relating to discrimination (whether in race, gender, religion, disability, age, sexual orientation or otherwise) in employment. The Supplier shall secure the observance of this provision by all its employees, agents and Subcontractors.

**18 DATA PROTECTION**

18.1 To the extent that the Supplier processes "Personal Data" under this Contract, it shall do so as a "Data Controller" (the meaning of both terms as given in the Data Protection Laws) and Personal Data exchanged between the parties pursuant to this Contract shall be treated as confidential information.

18.2 Notwithstanding clause 18.1, the Supplier shall and shall procure that each of the Subcontractors shall, comply at all times with the Data Protection Laws and not perform its obligations under this Contract in such a way as to cause either the Customer or the Supplier to breach any of its obligations under the Data Protection Laws. The Supplier shall immediately notify the Customer in the event that it becomes aware of any breach of the Data Protection Laws or this clause 18 by the Supplier or any of the Subcontractors in connection with this Contract.

18.3 The Supplier shall promptly and without undue delay notify the Customer if it becomes aware of any actual, suspected or attempted breach of this clause 18 or breach leading to the accidental or unlawful destruction, loss, alteration, or unauthorised disclosure of, or access to Personal Data processed in relation to this Contract and take such steps as the Customer, the Information Commissioner or any other law enforcement authority may reasonably require, within the timescales reasonably required by them, to remedy such breach and provide such further information as any of them may reasonably require.

18.4 When notified in writing by the Customer, or on termination of this Contract, the Supplier shall immediately cease to use any Personal Data obtained pursuant to this Contract and shall promptly arrange for its secure return or destruction

and certify to the Customer that it has successfully been completed, unless the Supplier is prevented by UK or EU law from destroying or returning all or part of such Personal Data, in which event such data shall be kept confidential and will not be actively processed any purpose by the Supplier or the Subcontractors.

18.5 The Supplier shall, indemnify, keep indemnified and hold harmless the Customer in full and on demand against all Losses, howsoever caused or incurred by the Customer or any third party arising from any breach of the Data Protection Laws or of the Supplier's obligations under this clause 18. This obligation shall survive the termination or expiry of this Contract.

**19 FREEDOM OF INFORMATION**

19 The Supplier acknowledges that the Customer may from time to time have contractual obligations with others and therefore is subject to the requirements of the Freedom of Information Act (FOIA) and the EIRs. The Supplier shall:

19.1 provide all necessary assistance and cooperation as reasonably requested by the Customer from time to time, to enable the Customer to comply with those contractual obligations;

19.2 transfer to the Customer all Requests for Information, including relating to this Contract that it receives as soon as practicable and in any event within two (2) Business Days of receipt;

19.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within two (2) Business Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and

19.4 in no event respond directly to a Request for Information unless authorised in writing to do so by the Customer.

**20 ANTI-BRIBERY**

20.1 The Supplier shall:

20.1.1 not take or knowingly permit any action to be taken that would cause the Customer to be in violation of any applicable anti-bribery or anti-money laundering laws, regulations and codes (including industry codes), and including for the avoidance of doubt the Bribery Act 2010;

20.1.2 at all times maintain and implement anti-bribery and anti-corruption policies and procedures which shall (without limitation) i) ensure that bribery or attempted bribery is prevented from taking place on its behalf, and ii) reflect a zero tolerance approach to bribery.

20.2 The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods as applicable in connection with this 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 20 (**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.

**21 PUBLICITY**

21 The Supplier shall not, without the prior written consent of the Customer:

21.1 advertise, publicly announce or provide to any other person information relating to the existence or details of this Contract; or

21.2 use the Customer's name or logo in any format for any promotional or advertising purpose.

**22 RECORD KEEPING AND RIGHT TO AUDIT**

22.1 The Supplier shall keep and maintain for six years after termination or expiry of this Contract, full and accurate records of this Contract including the Services and Goods supplied under it and all payments made by the Customer.

22.2 The Supplier shall, grant to the Customer, its authorised agents and any regulator of the Customer, access to the premises and to such records of the Supplier and/or any Subcontractor as may be reasonably required to verify the Supplier's compliance with this Contract.

22.3 The terms of this clause shall survive this Contract.

**23 CUSTOMER'S ETHOS AND POLICIES**

23.1 The Supplier shall adhere to the Customer's policies and procedures and all relevant statutory and legal requirements relating to such policies including:

23.1.1 Ethical and Responsible Sourcing policy;

23.1.2 Environmental policy;

23.1.3 Equality, Diversity and Human Rights policy;

23.1.4 Site Procedures and Health & Safety;

23.1.5 Smoking Policy and Alcohol and Drugs Policy; and

23.1.6 any conduct principles or corporate social responsibility statement of principles of the Customer in force from time to time.

23.2 The Supplier warrants that no slavery, human trafficking or child labour is taking place in its business nor in any of its supply chains nor in the business of any of the Supplier's Group Companies. In performing its obligations under this Contract, the Supplier shall comply and shall ensure that each of its Subcontractors complies with the Modern Slavery Act 2015. Where the Supplier (or any of the Supplier's Group Companies) is required to comply with section 54 of the Modern Slavery Act 2015 the Supplier shall provide Customer with a copy of that statement under that section, promptly after publication of that statement. It shall respond within five (5) Business Days to any request from the Customer in respect of the Supplier's compliance with such legislation.

23.3 Where any sub-clauses of this clause 23 refer to a "supply chain", this includes any and all Sub-contractors and suppliers who are involved in the provision of goods and/or services which are used in, or which form part of, the Goods and/or Services provided to the Customer under this Contract. The Supplier

- warrants that, so far as it is aware, no slavery, human trafficking or child labour is taking place in its supply chain. It undertakes to obtain a legally binding warranty from those within its supply chain that they are not doing anything which (if it were done in the UK) would amount to an offence under the Modern Slavery Act 2015.
- 23.4 The Supplier shall respond to any request from the Customer (a) to demonstrate the Supplier's compliance with the Modern Slavery Act 2015 and with this clause 23 and/or (b) for information about steps which the Supplier is taking or has taken (if any) with a view to ensuring that there is no slavery, human trafficking or child labour in its supply chain, in each case within five (5) Business Days.
- 23.5 If requested, the Supplier will provide sufficient information to the Customer to demonstrate its compliance with the policies referred to in clauses 23.1 & 23.2.
- 23.6 The Supplier shall implement due diligence procedures for its own suppliers, Subcontractors and other participant supply chains to ensure that there is no slavery, child labour or human trafficking in its supply chains.
- 23.7 The Supplier warrants that neither the Supplier nor any of its officers, employees or Subcontractors have been convicted of any offence involving slavery, child labour or human trafficking, nor is it and nor are any of them subject of any investigation, inquiry or enforcement proceedings by any governmental, or regulatory body regarding any offence or alleged offence of or in connections with slavery, child labour or human trafficking in any jurisdictions.
- 23.8 The Supplier shall maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Customer in connection with this Contract and shall implement regular audits to monitor compliance with the requirements of this clause 23.
- 23.9 The Supplier shall indemnify, keep indemnified and hold harmless the Customer in full and on demand against all Losses howsoever incurred or arising as a result of any breach of any warranty in this clause 23.
- 23.10 The Supplier shall not engage in any conduct which causes or is reasonably likely to cause damage to the Customer's reputation or conflict with the interests of the Customer.
- 23.11 The Supplier shall comply with any PQQ process required by the Customer from time to time and shall ensure that its PQQ responses are correct and accurate at all times. The Supplier shall review and update its PQQ regularly and shall provide a copy of the updated PQQ to the Customer within thirty (30) calendar days of each anniversary of the Commencement Date or as may otherwise be requested by the Customer.
- 23.12 For the avoidance of doubt, a breach of any term contained in this clause 23 shall comprise a material breach for the purpose of clause 24.3.1.
- 24 Termination**
- 24.1 Without limiting its other rights or remedies, the Customer may terminate this Contract without liability prior to the Supplier commencing work in respect of the Services or delivery in respect of the Goods.
- 24.2 Without limiting its other rights or remedies, the Customer may terminate this Contract without liability and with immediate effect by giving written notice to the Supplier if:
- 24.3.1 the Supplier commits a material breach of the terms of this Contract and (if such a breach is remediable) fails to remedy that breach within five (5) Business Days of receipt of notice to do so;
- 24.3.2 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 insolvent or unable to pay its debts or as having no reasonable prospect of so doing under the Insolvency Act 1986 or commences renegotiation of any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors or 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, administration or liquidation of the Supplier (being a company or limited liability partnership) or enters into or is petitioned for bankruptcy (being an individual);
- 24.3.3 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 24.3.2;
- 24.3.4 the Supplier commits any act or omission which affects or could adversely affect the Customer's reputation or goodwill, or could bring the Customer into disrepute by association with the Supplier, or which is contrary to the Customer's charitable objects or constitutional documents;
- 24.3.5 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;
- 24.3.6 any directors of the Supplier (where it is a body corporate) or partners or directing officers (where it is not) are found guilty of a criminal offence;
- 24.3.7 the Supplier suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business; or
- 24.3.8 the Supplier breaches any conduct principles or corporate social responsibility statement or principles of the Customer in force at any time.
- 24.4 Termination of this Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.
- 24.5 In the event of termination of this Contract howsoever caused, the Customer shall pay the Supplier pro rata for each day up to the date of termination in accordance with the terms of this Contract and the Supplier shall immediately repay to the Customer any amount which the Supplier may have been paid in advance in respect of Goods and, or Services not provided or procured by the Supplier at the date of termination.

24.6 Clauses which expressly or by implication survive termination or expiry of this Contract shall continue in full force and effect.

**25 CONSEQUENCES OF TERMINATION**

- 25.1 On termination or expiry of this Contract for any reason, the Supplier shall immediately deliver to the Customer all Deliverables (including any data and/or Personal Data) whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, the Customer may enter the Supplier's premises and take possession of them. Until these items have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose unconnected to this Contract.
- 25.2 Without prejudice to clause 18.4, in the event of termination or expiry of this Contract for any reason, the Supplier shall immediately return all Confidential Information of the Customer and all Customer Materials to the Customer. The Supplier agrees that, if so requested by the Customer, it will allow the Customer, or an inspection agent or any regulator of the Customer, access to its establishment to verify that this has been done, with reasonable notice and during business hours.
- 25.3 In the event of any termination or expiry of this Contract, the Supplier shall immediately return all property and data belonging to the Customer, or supplied to the Supplier by or on the Customer's behalf for the purposes of this Contract produced by the Supplier for the Customer under this Contract.

**26 SUBCONTRACTORS**

- 26.1 The Customer consents to the use of Subcontractors by the Supplier pursuant to this Contract, provided the Subcontractor is subject to equivalent contractual obligations to those contained in clauses 14 (confidentiality), 16 (statutory regulation), 17 (discrimination), 19 (freedom of information), 20 (anti-bribery), 21 (publicity), 22 (record keeping and Right to audit), 23 (Customer's Ethos and Policies) and 25.3 (return of property).
- 26.2 Subcontracting shall not relieve the Supplier of its obligations under this Contract and the Supplier confirms that it is solely responsible and liable for the Subcontractor under this Contract.

**27 GENERAL**

**27.1 Assignment and other dealings**

- 27.1.1 The Customer may assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Contract.
- 27.1.2 The Supplier shall not assign, transfer, mortgage, charge, subcontract, or deal in any other manner with all or any of its rights or obligations under this Contract without the prior written consent of the Customer except that it may subcontract as set out in clause 26.

**27.2 Notices**

- 27.2.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party (for the attention of the Secretary for Business Administration in the case of notices to the Customer) 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 by notice 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 by courier.
- 27.2.2 A notice or other communication served pursuant to clause 27.2.1 shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 27.2.1; 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.
- 27.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

27.3 **Severance.** If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the 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, but shall not affect the validity and enforceability of the rest of this Contract.

27.4 **Waiver.** A waiver of any right or remedy under this 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 under this Contract or by law shall not constitute a waiver of any other right or remedy, nor shall it prevent or restrict the further exercise of any other right or remedy. No single or partial exercise of such right or remedy provided under this Contract or by law shall prevent or restrict the further exercise of any other right or remedy.

27.5 **No partnership or agency.** Nothing in this 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 or make any commitments for or on behalf of the other party in any way.

27.6 **Third parties.** No one other than a party to this Contract shall have any right to enforce any of its terms and a person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Contract

27.7 **Variation/Change Control** Except as set out in these Terms & Conditions, no variation of this Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by a director of the Customer. Any requirement for a Change shall be subject to the

Change Control Procedure and conducted between the Customer's authorised representative and the Supplier's authorised representative.

- 27.8 **Rights and Remedies.** The rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.
- 27.9 **Inadequacy of Damages.** The Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Contract by the Supplier. Accordingly, the Customer shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Contract.
- 27.10 **Entire Agreement.** This Contract constitutes the entire agreement between the parties relating to Goods and/or Services (as applicable) and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 27.11 **Dispute Resolution.**
- 27.11.1 If any dispute arises in connection with this Contract, a director or other senior representative of each party with authority to settle the dispute will,
- within fourteen (14) days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- 27.11.2 If the dispute is not wholly resolved at that meeting, the parties will attempt to settle it in accordance with the CEDR Model Mediation Procedure.
- 28.11.3 The commencement of mediation will not prevent the parties commencing or continuing court proceedings.

27.12 **Governing law.** This 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 laws of England and Wales.

27.13 **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 Contract or its subject matter or formation (including non-contractual disputes or claims).