



# COMPUTER NETWORK DEFENCE

## Standard Terms and Conditions for Supply of Services

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## TABLE OF CONTENTS

1. INTERPRETATION	3
2. COMMENCEMENT AND DURATION	4
3. INTRODUCTION	4
4. SUPPLIER'S RESPONSIBILITIES	4
5. CLIENT'S OBLIGATIONS	5
6. INTRODUCTION FEES	5
7. CHANGE CONTROL	6
8. CHARGES AND PAYMENT	6
9. QUALITY OF SERVICES	7
10. INTELLECTUAL PROPERTY RIGHTS	7
11. INDEMNITY AND INSURANCE	8
12. CONFIDENTIALITY	8
13. ANTI-BRIBERY	9
14. LIMITATION OF LIABILITY	9
15. TERMINATION	10
16. CONSEQUENCES OF TERMINATION	10
17. REMEDIES	10
18. FORCE MAJEURE	11
19. ASSIGNMENT AND OTHER DEALINGS	11
20. VARIATION	11
21. WAIVER	11
22. RIGHTS AND REMEDIES	12
23. SEVERANCE	12
24. ENTIRE AGREEMENT	12
25. NO PARTNERSHIP OR AGENCY	12
26. THIRD PARTY RIGHTS	12
27. NOTICES	12
28. COUNTERPARTS	13
29. DISPUTE RESOLUTION	13
30. GOVERNING LAW	13

**BACKGROUND:**

The Client wishes to engage the Supplier for the provision of its services and the Supplier is willing to provide the Services to the Client as set out in Schedule 1 Services and in accordance with the terms of this agreement.

**IT IS AGREED:****1. INTERPRETATION**

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

- a. "Business Day" means a 7.5 hour working day, between the hours of 9.00am to 5.00pm Monday to Friday inclusive excluding public holidays in England and Wales, unless otherwise stated in the associated paperwork;
- b. "Commencement Date" means the date hereof;
- c. "Confidential Information" means any information of a confidential nature, as described in clause 10.2;
- d. "Client's Equipment" means any equipment, systems, cabling or facilities provided by the Client and used directly or indirectly in the supply of the Services;
- e. "Controller" means the natural or legal person, public authority, agency or other body which, alone or jointly with others determines the purposes and means of processing personal data
- f. "Data Processor" means either of the parties who may process personal data on behalf of the controller in the execution of the services,
- g. "Deliverables" means all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services in any form, including those specified in Schedule 1.
- h. "Document" includes, 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;
- i. "General Data Protection Regulation", "GDPR", means the EU General Data Protection Regulation which are effective as of 25th May, 2018.
- j. "In-put Material" means all Documents, information and materials provided by the Client relating to the Services, including those specified in Schedule 1.
- k. "Intellectual Property Rights" or "IPR" means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
- l. "Personal Data" means any information relating to an identified or identifiable natural person ('data subject'), in particular by reference to an identifier such as a name, location or factors specific to that natural person
- m. "Pre-existing Materials" means all Documents, information and materials provided by the Supplier or its agents, subcontractors, consultants or employees relating to the Services which existed prior to the commencement of this agreement, including those specified in Schedule 1;
- n. "Proposal" means the materials set out in appendix 1 handed to the Client supporting the Supplier's presentation to the Client and describing how the Supplier proposes to carry out the Services;
- o. "Sensitive Personal Data", (or "special category personal data"), includes genetic, racial, biometric, religious and political opinion data and data concerning sexual orientation.
- p. "Services" means the services to be provided by the Supplier under this agreement, as set out in schedule 1;
- q. "Supplier's Equipment" means any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Client;
- r. "Supplier's Team" means [the Supplier's Manager and] all employees, consultants, agents and subcontractors engaged in relation to the Services and who are appointed under clause 3; and

s. "VAT" means value added tax chargeable under the Value Added Tax Act 1994.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

## 2. COMMENCEMENT AND DURATION

- 2.1 The Supplier shall provide the Services to the Client on the terms and conditions of this agreement.
- 2.2 The Supplier shall provide the Services from the Commencement Date and shall continue to provide the Services throughout the term.
- 2.3 Neither party seeks to create or imply any mutuality of obligation between the parties in the course of the performance of this agreement for Services or during any notice period.
- 2.4 This agreement shall commence on the Commencement Date and continue for a period of 24 months and, after that, shall continue to be supplied unless this agreement is terminated by one of the parties giving the other at least 28 days' notice in writing or as specified in Schedule 1, unless this agreement is terminated in accordance with clause 13.

## 3. INTRODUCTION

- 3.1 During the engagement and for a period of 6 months following the cessation of services, the Client will be only able to engage Supplier personnel, whether permanent or subcontracted, via the Supplier
- 3.2 If direct engagement occurs, the Client shall be liable to pay the Supplier an Introduction Fee where:
  - 3.2.1 the Client Engages the supplier's staff, the subcontractor or any subcontractor's Staff other than through the Supplier either during the Assignment or within a period of 6 months from the termination of the services in respect of which the Supplier Staff was supplied, or if there was no supply, within 6 months of the Introduction of the Staff or Partner by the Supplier to the Client; or
  - 3.2.2 the Client introduces the Supplier Staff or Partner to a third party (including any member of the Client's Group), and such introduction results in an engagement of the Staff or Partner by the third party other than through the Supplier either during the Assignment or within 6 months from the termination of the Assignment.
- 3.3 The Supplier will calculate the Introduction Fee as 25% of base salary offered to the individual or subcontractor by the Client
- 3.4 The Supplier will not refund the Introduction Fee if the engagement subsequently terminates.
- 3.5 VAT is payable in addition to any Introduction Fee due.

## 4. SUPPLIER'S RESPONSIBILITIES

- 4.1 The Supplier shall provide the Services, to the Client in accordance with Schedule 1.
- 4.2 The Supplier shall meet any performance dates specified in Schedule 1. If the Supplier fails to do so, the Client may (without prejudice to any other rights it may have):
  - a. terminate this agreement in whole or in part without liability to the Supplier;
  - b. refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

- c. purchase substitute services from elsewhere and receive a commensurate refund of charges paid/a reduction to the charges;
- d. hold the Supplier accountable for any loss and additional costs incurred; and

4.3 The Supplier shall:

- a. co-operate with the Client in all matters relating to the Services;
- b. provide all equipment, tools, vehicles and other items required to provide the Service and shall ensure that all items are fit for purpose and free from defects in installation;
- c. ensure that all goods, materials, standards and techniques used in providing the Services are of good quality and are free from defects in workmanship, installation and design;
- d. comply with all applicable laws and regulations relating to the provision of the Services;
- e. subject to the prior written approval of the Client, appoint or, at the written request of the Client, replace without delay any member of the Supplier's Team, who shall be suitably skilled, experienced and qualified to carry out the Services.
- f. promptly inform the Client of the absence (or anticipated absence) of any member of the Supplier's Team.
- g. not make any changes to the agreed team-members other than due to sickness, maternity leave, redundancies or departures without the prior written approval of the Client (such approval not to be unreasonably withheld or delayed); and
- h. ensure that the team-members use reasonable care in the performance of the Services and that they observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client or end-client premises. The Client reserves the right to refuse the Supplier's Team access to the Client's premises, which shall only be given to the extent necessary for the performance of the Services;
- i. observe, and ensure that the Supplier's Team observe, all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's premises and that have been communicated to the Supplier under clause 4.4. The Client reserves the right to refuse the Supplier's Team access to the Client's premises, which shall only be given to the extent necessary for the performance of the Services;
- j. notify the Client as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and
- k. before the date on which the Services are to start, obtain, and at all times maintain, all necessary licences and consents and comply with all relevant legislation in relation to; the Services, the installation of any equipment, the use of In-put Material, the use of all Pre-existing Materials, and the use of the Client's equipment in relation to the Supplier's equipment.

4.4 The Supplier acknowledges and agrees that the Client is entering into this agreement on the basis of the Proposal, the Proposal is accurate and complete in all material respect; and if it considers that the Client is not, or may not, be complying with any of the Client's obligations, it shall only be entitled to rely on this as relieving the Supplier's performance under this agreement:

- a. to the extent that it restricts or precludes performance of the Services by the Supplier; and
- b. if the Supplier, promptly after the actual or potential non-compliance has come to its attention, has notified details to the Client in writing.

## 5. CLIENT'S OBLIGATIONS

5.1 The Client shall

- a. co-operate with the Supplier in all matters relating to the Services;
- b. provide such access to the Client's premises and data, and other facilities as may reasonably be requested by the Supplier and agreed with the Client in writing in advance, for the purposes of the Services;
- c. provide such information as the Supplier may reasonably request and the Client considers reasonably necessary, in order to carry out the Services, in a timely manner, and ensure that it is accurate in all material respects;
- d. inform the Supplier of all health and safety rules and regulations and any other reasonable legal and security requirements that apply at any of the Client's premises.

## 6. INTRODUCTION FEES

6.1 The Suppliers' team, whether consisting of permanent employees, subcontractors, agents or partners, will be only able to undertake services with the Client with Supplier involvement after a period of 6 months from the termination of services to the Client.

6.2 If direct engagement occurs, the Client shall be liable to pay the Supplier an Introduction Fee where:

6.2.1 the Client Engages the whole or any part of the Supplier Team other than through the Supplier either during the Assignment or within a period of 6 months from the termination of the services in respect of which the Supplier Staff was supplied, or if there was no supply, within 6 months of the Introduction of the Staff or Partner by the Supplier to the Client; or

6.2.2 the Client introduces the Supplier Staff or Partner to a third party (including any member of the Client's Group), and such introduction results in an engagement of the Staff or Partner by the third party other than through the Supplier either during the Assignment or within 6 months from the termination of the Assignment.

6.3 The Supplier will calculate the Introduction Fee in accordance with the scale of fees for permanent introductions set out in Supplier Terms of Business, available on request.

6.4 The Supplier will not refund the Introduction Fee if the engagement subsequently terminates.

6.5 VAT is payable in addition to any Introduction Fee due.

## 7. CHANGE CONTROL

7.1 The Client's Manager and the Supplier's Manager shall discuss matters relating to the Services, ideally monthly.

7.2 If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing. If either party has made requests to make a change to the scope or execution of the Services, the Supplier shall, within a reasonable time (and in any event not more than 7 Business Days after receipt of the Client's request), provide a written estimate to the Client of:

- a. the likely time required to implement the change;
- b. any necessary variations to the Supplier's charges arising from the change; and
- c. any other impact of the change on this agreement.

7.3 Unless both parties consent to a proposed change, there shall be no change to this agreement.

7.4 If both parties consent to a proposed change, the change shall be made only after agreement of the necessary variations to the Services and any other relevant terms of this agreement, in accordance with clause 18.

7.5 If the Supplier requests a change to the scope or execution of the Services, in order to comply with any applicable safety or statutory requirements, and such changes do not materially affect the nature, scope of, or charges for the Services, the Client shall not unreasonably withhold or delay consent to it. Unless the Supplier's request was attributable to the Client's non-compliance with the Client's obligations, neither the Supplier's charges nor any other terms of this agreement shall vary as a result of such change.

## 8. CHARGES AND PAYMENT

8.1 In consideration of the provision of the Services by the Supplier, the Client shall pay the charges as set out in the Schedule of Services in accordance with this clause 8.

8.2 The charges shall be paid in British pounds, unless otherwise agreed in writing between the parties.

8.3 The Client shall pay each invoice which is properly due and submitted to it by the Supplier, within 30 days of receipt, to a bank account nominated in writing by the Supplier.

8.4 If a party fails to make any payment due to the other party under this agreement by the due date for payment, then, without limiting the other party's remedies under clause 16 the defaulting party shall pay interest on the overdue amount at the late payment interest rate stipulated by HMRC, (see 8.4.1). Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount.

8.4.1 HMRC late payment interest rate as per: <https://www.gov.uk/government/publications/rates-and-allowances-hmrc-interest-rates-for-late-and-early-payments/rates-and-allowances-hmrc-interest-rates>

- 8.5 In relation to payments disputed in good faith, interest under clause 8.4 is payable only after the dispute is resolved on sums found or agreed to be due, from the due date until payment.
- 8.6 Invoices covering payment in respect of materials purchased by, or services provided to, the Supplier, or for reimbursement of expenses, shall be payable by the Client only if accompanied by relevant receipts and prior written approval was obtained from the Client.
- 8.7 Expenses shall be as per the client guidelines, or in the absence of such guidelines, as per the CND Subcontractor Expense Guidelines.
- 8.8 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services in such form as the Client shall approve. The Supplier shall allow the Client to inspect such records at all reasonable times on request.
- 8.9 The Client may at any time set off any liability of the Supplier to the Client against any liability of the Client to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. Any exercise by the Client of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.
- 8.10 Where Client banking details have been provided incorrectly to Supplier and should a payment be successful, the invoice will be considered paid, it is the Client responsibility to recover the erroneous payment.
- 8.11 The parties agree that the Supplier may review and increase the charges provided that such charges will not be increased more than once in any 12-month period. The Supplier will give the Client not less than 2 months' notice of any increase. If such increase is not acceptable to the Client, it may within 5 working days of such notice having been given or received in accordance with clause 15, terminate this agreement by giving 30 days' notice in writing to the Supplier.

## 9. QUALITY OF SERVICES

- 9.1 The Supplier warrants to the Client that:
  - a. the Supplier will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the industry for similar services;
  - b. the Services will conform with all descriptions and specifications provided to the Client by the Supplier, including any relevant Proposal; and
  - c. the Services [and Deliverables] will be provided in accordance with all applicable legislation from time to time in force, and the Supplier will inform the Client as soon as it becomes aware of any changes in that legislation.
- 9.2 The Client's rights under this agreement are in addition to the statutory terms implied in favour of the Client by the Supply of Goods and Services Act 1982 and any other statute.
- 9.3 The provisions of this clause 9 shall survive any performance, acceptance or payment pursuant to this agreement and shall extend to any substituted or remedial services provided by the Supplier.

## 10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 The Supplier shall own all Intellectual Property Rights in existence as at the date of this agreement and which are created in the provision of the Services. Nothing in this agreement is intended to transfer any title, right or interest in such Intellectual Property Rights to the Client.
- 10.2 The Supplier shall obtain waivers of any moral rights in the products of the Services (including the Deliverables) 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.

- 10.3 In relation to any claim (including threats) or dispute brought to the Client's attention, the Client shall:
- a. upon becoming aware, notify the Supplier of such a claim (including threats) or dispute;
  - b. allow the Supplier, at its own cost, to conduct all negotiations and proceedings to settle the IPR's claim;
  - c. provide the Supplier with reasonable assistance regarding the IPR's claim;
  - d. not, without prior consultation with the Supplier, make any admission in relation to the IPR's claim or attempt to settle it, provided that the Supplier considers and defends any IPR
  - e. Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Client into disrepute.

## 11. INDEMNITY AND INSURANCE

- 11.1 The Supplier shall indemnify and hold the Client 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 Client as a result of or in connection with:
- a. 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 or supply of the products of the Services (including the Deliverables); or
  - b. any claim made against the Client in respect of any liability, loss, damage, injury, cost or expense sustained by the Client's employees or agents or by any Client or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services or the Deliverables as a consequence of a breach or negligent performance or failure or delay in performance of this agreement by the Supplier.
- 11.2 During the term of this agreement the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance in an amount not less than £5,000,000 and shall, on the Client's request, produce the insurance certificate giving details of cover for the current year.
- 11.3 The Supplier shall at the request of the Client from time to time, furnish such evidence as the Client may reasonably request to demonstrate that such insurance cover has been maintained in force with such insurer and not breached and provide copies of any policy documentation requested by the Client.
- 11.4 The Supplier shall not do anything to invalidate any insurance policy or to prejudice the Client's entitlement under it and shall notify the Client if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.
- 11.5 The Supplier's liabilities under this agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in 11.2.
- 11.6 The provisions of this clause 9 shall survive termination of this agreement, however arising.

## 12. CONFIDENTIALITY

- 12.1 Both parties undertake that each shall comply with the requirements of the GDPR in general terms, and specifically,
- a. that the Data Processor only processes Personal Data and Sensitive Personal Data on receipt of documented instructions from the Controller
  - b. to meet the requirement to have appropriate technical and procedural security measures as defined in GDPR terms, in place;
  - c. to assist the other party, where appropriate, in complying with the various obligations in Articles 32 to 36 of the GDPR, include assistance with notifying the supervisory authority or a data subject of a data breach when required and help with carrying out a data protection impact assessment if required;
  - d. the Data Processor will advise the Data Controller immediately on becoming aware of any personal data breach;
  - e. to comply with the obligations in Articles 15-19 if required and delete all existing copies of the personal data in accordance with the retention policies unless otherwise required to retain it by law;
  - f. to make available to the other party all records necessary to demonstrate compliance with the company's obligations under Article 28 of the GDPR and allow for and contribute to audits as mandated.
- 12.2 Both parties undertake that each shall not at any time during this agreement, and for a period of 3 years after termination of



this agreement, disclose to any person any In-put Material (in the case of the Supplier), Pre-existing Material (in the case of the Client), technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature or any other confidential information concerning the disclosing party's business or its products which the receiving party may obtain in connection with entering into this agreement, except as is permitted by clause 10.

- 12.3 Both parties may disclose Confidential Information:
- to its employees, agents, consultants or subcontractors as need-to-know such information for the purpose of discharging its obligations under this agreement. The party in receipt of such information shall ensure that its employees, agents, consultants or subcontractors to whom it discloses the Confidential Information comply with this clause 12; and
  - as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.4 All disclosure is to be recorded. Where Personal Data of a data subject is disclosed this should be with the consent of the data subject or with other lawful reason
- 12.5 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under this agreement.
- 12.6 All materials, equipment and tools, drawings, specifications and data supplied by one party to the other shall, at all times, be and remain the exclusive property of the party supplying such materials, equipment and tools, drawings, specifications and data, but shall be held by the receiving party in safe custody at its own risk and maintained and kept in good condition by that party until returned to the supplying party and shall not be disposed of or used other than in accordance with the any written instruction or authorisation. Personal Data will not be disclosed to any third party without the written authority of the Data Controller.
- 12.7 The Data Processor will not transfer or permit the transfer of the Data to any territory outside the European Economic Area without the prior written consent of the Data Controller

### 13. ANTI-BRIBERY

- 13.1 The Supplier shall:
- comply with all applicable laws, statutes, regulations and codes relating to antibribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
  - not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 11.1.b, and will enforce them where appropriate;
  - promptly report to the Client any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this agreement;
  - within 2 months of the date of this agreement, and annually thereafter, certify to the Client in writing signed by an officer of the Supplier, compliance with this clause 11 by the Supplier and all persons associated with it by reason of supplying the Services under this agreement. The Supplier shall provide such supporting evidence of compliance as the Client may reasonably request.
- 13.2 Both parties shall ensure that any staff or subcontractors who is performing services in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 13. The engaging party shall be responsible for the observance and performance by such persons of the terms herein and shall be directly liable to the other party for any breach by such persons of any of the associated terms of engagement.

### 14. LIMITATION OF LIABILITY

- 14.1 Both the Supplier and the Client's total liability under or in connection with this agreement shall be limited to £5,000,000 for each and every claim originating out of the same originating cause or source. This limit shall apply howsoever that liability arises including, without limitation, a liability arising by breach of contract, arising by tort, (including, without limitation, the tort

of negligence) or arising by breach of statutory duty.

- 14.2 Without prejudice to clause 12 neither party shall be liable to the other, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
- loss of profit; or
  - loss of goodwill; or
  - loss of business or business opportunity; or
  - loss of anticipated saving; or
  - loss or corruption of data or information; or
  - special, indirect or consequential damage or loss suffered by the other party that arises under or in connection with this agreement.

## 15. TERMINATION

- 15.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- the other party fails to pay any undisputed amount due under this agreement on the due date for payment and remains in default for more than 60 days after being notified in writing to make such payment;
  - the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so
  - the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
  - the other party 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 is deemed unable to pay its debts within the meaning of any relevant legislation;

## 16. CONSEQUENCES OF TERMINATION

- 16.1 On termination of this agreement for any reason, the Supplier shall immediately deliver to the Client;
- all in-put Material and all copies of information and data provided by the Client to the Supplier for the purposes of this agreement. The Supplier shall certify to the Client that it has not retained any copies of Input Material or other information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in clause 12;
  - a refund of any sums paid in advance for the Services which have not been received by the Client as a result of the termination of the agreement.
- 16.2 On termination of this agreement for any reason, the Client shall immediately pay to the Supplier all sums due and owing to it in connection with this agreement.
- 16.3 Both parties shall return, destroy or otherwise deal with any Confidential Information as the disclosing party shall instruct.
- 16.4 If either party fails to fulfil its obligations under this clause 16 then the defaulting part with return and provide an undertaking when it is returned of any items which are the property of the other party and which should have been returned. Until they have been returned or repossessed, the defaulting party shall be solely responsible for their safe keeping.
- 16.5 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

## 17. REMEDIES

If any Services are not supplied in accordance with any terms of this agreement, the Client shall be entitled (without prejudice to any other right or remedy) to exercise any one or more of the following rights or remedies; to require the Supplier, without charge to the Client, to carry out such additional work as is necessary to correct the Supplier's failure; and in any case, to claim such damages as it may have sustained in connection with the Supplier's breach (or breaches) of this agreement not otherwise

covered by the provisions of this clause 17.

## 18. FORCE MAJEURE

- 18.1 "Force Majeure Event" includes any circumstance not within a party's reasonable control including, without limitation: acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; collapse of buildings, fire, explosion or accident; and interruption or failure of utility service.
- 18.2 Provided it has complied with clause 16.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event ("Affected Party"), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 18.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 18.4 The Affected Party shall: as soon as reasonably practicable after the start of the Force Majeure Event but no later than 5 Business Days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this agreement; and use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 18.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 30 days, the party not affected by the Force Majeure Event may terminate this agreement by giving 14 days written notice to the Affected Party.
- 18.6 If the Force Majeure Event prevails for a continuous period of more than 2 months, either party may terminate this agreement by giving 14 days' written notice to the other party. On the expiry of this notice period, this agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination.

## 19. ASSIGNMENT AND OTHER DEALINGS

- 19.1 The Supplier shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.
- 19.2 The Client may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this agreement, provided that the Client gives prior written notice to the Supplier.

## 20. VARIATION

Subject to clause 7, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## 21. WAIVER

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

## 22. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, not exclusive of, any rights or remedies provided by law.

## 23. SEVERANCE

- 23.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 23.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## 24. ENTIRE AGREEMENT

- 24.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 24.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 24.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

## 25. NO PARTNERSHIP OR AGENCY

- 25.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 25.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## 26. THIRD PARTY RIGHTS

No one other than a party to this agreement shall have any right to enforce any of its terms.

## 27. NOTICES

- 27.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by first-class post or other next working day delivery service at its registered office.
- 27.2 Any notice or communication shall be deemed to have been received; if delivered by hand, on signature of a delivery receipt; if sent by pre-paid first-class post or other next working day delivery service, at 9.00am on the second Business Day after posting or at the time recorded by the delivery service.
- 27.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 28. COUNTERPARTS

- 28.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 28.2 Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. Without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.
- 28.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

## 29. DISPUTE RESOLUTION

- 29.1 The Parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between senior executives of the Parties, who have authority to settle the same.
- 29.2 If the matter is not resolved by negotiation within 30 days of receipt of a written 'invitation to negotiate', the parties will attempt to resolve the dispute in good faith through an agreed ADR procedure, or in default of agreement, through an ADR procedure as recommended to the Parties by the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators.
- 29.3 If the matter has not been resolved by an ADR procedure within 60 days of the initiation of that procedure, or if any Party will not participate in an ADR procedure, the dispute may be referred to arbitration by any Party. The seat of the arbitration shall be England and Wales. The arbitration shall be governed by both the Arbitration Act 1996 and the Rules. Should the parties be unable to agree on an arbitrator or arbitrators, or be unable to agree on the rules for Arbitration, any Party may, upon giving written notice to other parties, apply to the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators for the appointment of an Arbitrator or Arbitrators and for any decision on rules that may be necessary.
- 29.4 Nothing in this clause shall be construed as prohibiting a Party from applying to the courts of England and Wales for interim injunctive relief.

## 30. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales or other jurisdiction [EU] with rights under existing legislation

## 31. JURISDICTION

- 31.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).
- 31.2 Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be governed by and construed in accordance with the courts of England and Wales and resolved in accordance with the procedures set out in clause 29.