



Terms and Conditions

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

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

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 4.9.4.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 12.5.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions and the Statement of Work.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Customer: the person or firm who purchases Services from the Supplier.

Customer Default: has the meaning set out in clause 4.2.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; DPA 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner.

Data Protection Services: if applicable, the services set out in the Statement of Work.

DPA 2018: means the Data Protection Act 2018.

DPO: means a Data Protection Officer appointed pursuant to the Data Protection Legislation.

Deliverables: the deliverables set out in the Statement of Work produced by the Supplier for the Customer.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how



and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Losses: any losses suffered by the Customer howsoever arising to include, without limitation, loss of profits, loss of business, depletion of goodwill, loss of anticipated savings, loss of goods, loss of contract, loss of use, wasted expenditure, loss or corruption of data or information, or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

Order: the Customer's order for Services as set out in the Statement of Work or overleaf, as the case may be.

Penetration Testing: the service carried out in accordance with the Penetration Testing Service.

Penetration Testing Service: means a cyber-attack simulation service, or similar threat detection simulation, in which the Supplier will attempt to discover any points of vulnerability in the System(s). The scope of which is set out in the Statement of Work.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Statement of Work.

Statement of Work: the description or specification of the Services provided in writing by the Supplier to the Customer.

Supplier: Intelligent STORM Solutions Limited, a company registered in England and Wales with company number 11425744.

Supplier Materials: has the meaning set out in clause 4.1.7.

System(s): means the systems and networks outlined in the Statement of Work that the Customer requires to be security tested as part of the Penetration Testing Service.

UK GDPR: means the retained EU Law version of the General Data Protection Regulation (EU 2016/679)

1.2 Interpretation:

1.2.1 Unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision:

- (a) is a reference to it as amended, extended or re-enacted from time to time; and
- (b) shall include all subordinate legislation made from time to time under that legislation or legislative provision.

1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.3 A reference to **writing** or **written** email but not fax.

1.2.4 A reference to Schedule, shall mean a schedule to these Conditions, unless stated otherwise.

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase the Services in accordance with these Conditions.

2.2 The Order shall be deemed accepted upon the earlier of:

- (a) the date when the Supplier issues written acceptance of the Order, or
- (b) the date the Supplier starts to perform the Services (at which point and on which date the Contract shall come into existence); or
- (c) (where the Supplier is required to carry out preparatory work in advance of the provision of Services, or where the Supplier commits to any third-party costs (e.g. licences fees, consultant fees etc)) the date when the Supplier commences the preparatory work, or incurs or becomes liable to incur the third party costs

(Commencement Date)

2.3 The Supplier can amend an Order within 14 days from the date of issue, provided the Order has not been accepted in accordance with clause 2.2 above.

2.4 The Supplier can cancel an Order, without any liability to the Customer, and for any reason, at any time prior to the Commencement Date.

2.5 Any descriptive matter or advertising issued by the Supplier, and any descriptions contained in the Supplier's catalogues, brochures, or website are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.7 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue, unless withdrawn or cancelled by the Supplier.

3. Supply of Services

3.1 The Supplier shall supply the Services to the Customer in accordance with these Conditions and the Statement of Work in all material respects.

3.2 The Supplier shall use its reasonable endeavours to meet any performance dates specified in the Statement of Work or as agreed elsewhere in writing, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier reserves the right to amend the Statement of Work if necessary to comply with any applicable law, regulatory or safety requirements, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.5 The Supplier makes no representation or gives any warranty to the effect that the Penetration Testing, or any other Service, will identify any or all possible security threats or vulnerabilities within the Customer's System.
- 3.6 Where the Supplier is providing a consultancy service for the Customer in relation to a third-party product, service and/or accreditation, the Supplier cannot guarantee third party accreditation in relation to such product or service and shall not be held liable in any respect for the Customer failing to achieve third party accreditation.
- 3.7 The Services and performance of these Conditions are subject to any exclusions or limitations set out in the Statement of Work.

4. Customer's obligations and Acknowledgements

- 4.1 The Customer shall:
 - 4.1.1 ensure that the terms of the Order and any information it provides in the Order are complete and accurate;
 - 4.1.2 co-operate with the Supplier in all matters relating to the Services;
 - 4.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation, Systems and other facilities and resources as reasonably required by the Supplier or any of the Supplier's agents;
 - 4.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 4.1.5 prepare the Customer's premises for the supply of the Services, to the extent necessary or as advised by the Supplier;
 - 4.1.6 obtain and maintain all necessary licences, permissions, consents or otherwise, which may be required for the Services before the date on which the Services are to start;
 - 4.1.7 keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
 - 4.1.8 comply with any additional obligations as set out in the Statement of Work;
 - 4.1.9 arrange a mutually convenient time for the Supplier to perform the Penetration Testing and any other Service;
 - 4.1.10 be solely responsible for making backups of the System(s) prior to the commencement of the Penetration Testing or any other Service to be provided by the Supplier;

- 4.1.11 make its staff available to answer any questions in relation to the Systems, to the extent that such questions may assist in providing the Services;
- 4.1.12 ensure that any third-party suppliers co-operate with the Supplier or its agents where necessary; and
- 4.1.13 provide advance written notice of any planned downtime of the environment used for the Penetration Testing, or any related Service.
- 4.2 The Customer acknowledges that they are solely responsible for the resilience of their own Systems.
- 4.3 The Customer acknowledges that the Supplier will store the Penetration Testing report for a period of 18 months from the date that the test was carried out, after which, the report will be deleted. Should the Customer wish for a pdf version of the report to be provided, the Customer can request, in writing, a copy of the report from the Supplier prior to expiry of the 18 month period referred to herein.
- 4.4 The Customer warrants to the Supplier that the conduct of the Penetration Testing Services is legal in the country that the Customer operates and where the Systems are located.
- 4.5 The Customer understands that when providing Penetration Testing Services the Supplier will actively attempt to breach the security controls and measures that the Customer has in place to gain access to their Systems and data and that such attempts would otherwise amount to criminal activity under the Computer Misuse Act 1990.
- 4.6 If the Customer is required to report any of the activities the Supplier undertakes as part of the Services to any regulatory, authority or external body, the Customer undertakes to promptly notify such body that the Supplier was acting under the Customer's instructions and pursuant to these Conditions.
- 4.7 The Customer acknowledges that the Services performed by the Supplier could result in significant downtime of the Systems and as such, whilst the Supplier will use its reasonable endeavours to ensure that any downtime is limited, it cannot guarantee the resilience of the Customer's Systems, the effectiveness of the Customer's own IT personnel or third party suppliers, or the extent of the downtime. As such, the Supplier shall not be liable to the Customer for any Losses or downtime arising as a result of the Penetration Testing Service being carried out.
- 4.8 Where any recommendation is made by the Supplier for implementation into the Systems of the Customer following the Penetration Testing, the Customer undertakes to review the potential impact of such recommendation and any related risks. The Supplier shall not be liable to the Customer for any Losses incurred by the Customer in implementing any recommendations.
- 4.9 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
 - 4.9.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the

performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

- 4.9.2 the Supplier shall not be liable for any costs or Losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.9;
 - 4.9.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default; and
 - 4.9.4 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to terminate the Contract forthwith.
- 4.10 In the event that the Supplier has to reschedule any planned testing or Service for any reason, the Supplier will endeavour to provide the Customer with the next available appointment to carry out the Service, however, the Customer acknowledges that the Supplier will not be in default of these Conditions, should there be a delay in providing the Services.

5. Charges and payment

- 5.1 The Charges for the Services shall be calculated as follows:
 - 5.1.1 the Charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in the Statement of Work;
 - 5.1.2 the Supplier's daily fee rates for each individual are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
 - 5.1.3 the Supplier shall be entitled to charge an overtime rate of 50% of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 5.1.2; and
 - 5.1.4 the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 5.2 When a date is agreed between the parties for the performance by the Supplier of any part of the Service and the Customer cancels or reschedules the performance of any Service, the Customer will remain liable to pay:
 - 5.2.1 50% of the Charges, where less than 20 Business Days' but more than 5 Business Days' notice has been given by the Customer prior to the scheduled performance date; or
 - 5.2.2 100% of the Charges, where less than 10 Business Days' notice has been given by the Customer prior to the scheduled performance date.
- 5.3 The Supplier reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail

Prices Index in the preceding 12-month period and the first such increase shall take effect within the 12 month period immediately following the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.

- 5.4 Subject to clause 5.4, the Supplier shall invoice the Customer on completion of the Services, on any invoice date set out in the Statement of Work, or at any time at its discretion on an interim basis.
- 5.5 Where clause 5.2 applies, the Supplier shall be entitled to invoice the Customer immediately, with such invoice being payable in accordance with clause 5.6 below.
- 5.6 The Customer shall pay each invoice submitted by the Supplier:
 - 5.6.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer;
 - 5.6.2 in full and in cleared funds to a bank account nominated in writing by the Supplier;
 - 5.6.3 in pounds sterling, unless otherwise agreed between the parties in writing, and time for payment shall be of the essence of the Contract.
- 5.7 The Supplier will also have the right to ask for a deposit to be paid in full before its commences the provision of its Services. The Supplier will also be entitled to ask for a payment on account from the Customer to cover any anticipated third party or "out of pocket" fees. Where the deposit, third party fees or "out of pocket expenses" are invoiced, that invoice shall be paid immediately upon delivery unless otherwise agreed with the Supplier in writing.
- 5.8 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.9 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 10, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.9 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.10 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.11 Receipts for payments will be issued by the Supplier only when requested by the Customer.
- 6. Data Protection Services**
 - 6.1 The Data Protection Services is a service offered by the Supplier if specified in the Statement of Work. The Data Protection Services will be subject to this clause 6 and the remainder of the Conditions, to the extent that they do not conflict with this clause. In the event of a conflict

between any other provision of the Conditions and this clause 6, the provisions of this clause 6 shall prevail.

- 6.2 The Supplier, if appointed as Data Protection Officer for the Customer, shall carry out the tasks set out in the Statement of Work.
- 6.3 The Customer acknowledges that the Supplier will not provide any legal advice in relation to UK GDPR and/or DPA 2018 but shall provide guidance in relation to the internal structure and compliance of the Customer as set out in the Statement of Work.
- 6.4 The contract term for the Data Protection Service is set out in clause 10.
- 6.5 Where the Supplier agrees to act as a DPO for the Customer (to be stated in the Statement of Work), the Customer undertakes to, and without limiting any other rights or remedies the Supplier may have, pay to the Supplier a sum equal to, all direct or indirect liabilities, costs, expenses, damages and Losses and all interest, penalties and all other professional costs and expenses suffered or incurred by the Supplier, arising out of or in connection with any claim being made against the Supplier, by reason of it being the DPO of the Customer, or any connected action (whether authorised by the Customer or not) of the Supplier in its capacity as DPO.
- 6.6 The Customer acknowledges and accepts that they will remain responsible for compliance with the Data Protection Legislation, which shall include, but not be limited to, payment of all claims, fines or penalties that may arise as a result of the noncompliance with the Data Protection Legislation.

7. Intellectual property rights

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 7.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

8. Data protection

- 8.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 8.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor.
- 8.3 Without prejudice to the generality of this clause 8 the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful collection of the Personal Data by the Supplier on behalf of the Customer for the duration and purposes of this Contract.
- 8.4 Without prejudice to the generality of this clause 8, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Contract:

- 8.4.1 process that Personal Data only on the documented written instructions of the Customer unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Customer;
- 8.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer where necessary, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 8.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 8.4.4 not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (a) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (b) the data subject has enforceable rights and effective legal remedies;
 - (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (d) the Supplier complies with reasonable written instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 8.4.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 8.4.6 notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- 8.4.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Domestic Law to store the Personal Data; and

- 8.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 8 for a period of two years from the date of termination of this Contract or the end of the term.
- 8.5 The Supplier may appoint third-party sub-processors of the Customer's Personal Data under this agreement, but will give notice of such appointment to the Customer as soon as reasonably practicable thereafter.
- 8.6 Either party may, at any time on not less than 30 (thirty) days' notice, revise this clause 8 by replacing it with any applicable controller to processor standard clauses or similar terms adopted under the Data Protection Legislation or forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
- 9. Limitation of liability**
- 9.1 References to liability in this clause 9 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.2 Nothing in this clause 9 shall limit the Customer's payment obligations under the Contract.
- 9.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 9.3.1 death or personal injury caused by negligence;
- 9.3.2 fraud or fraudulent misrepresentation; and
- 9.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 9.4 Subject to clause 9.3 (Liabilities which cannot legally be limited), the Supplier's total liability to the Customer shall be:
- 9.4.1 limited to the Charges in relation to all Services provided under the Statement of Work, (excluding any Data Protection services which fall under clause 9.4.2 below); and/or
- 9.4.2 in relation to Data Protection services provided by the Supplier under the Statement of Work, shall be limited to the Charges actually paid by the Customer to the Supplier in the 12 month period prior to the date the claim giving rise to the liability arises.
- 9.5 The caps on the Supplier's liabilities shall be reduced by:
- 9.5.1 payment of an uncapped liability;
- 9.5.2 amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment; and
- 9.5.3 amounts paid out by any insurance policy of the Supplier.
- 9.6 Subject to clause 9.3 (Liabilities which cannot legally be limited), the Supplier shall not be liable to the Customer for any Losses incurred by the Customer.
- 9.7 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for

an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

9.8 This clause 9 shall survive termination of the Contract.

10. Termination

10.1 Subject to clause 10.2 and 10.3, without affecting any other right or remedy available to it:

10.1.1 the Supplier may terminate the Contract at any time in writing; and

10.1.2 the Customer may terminate the Contract by giving the Supplier 3 months' written notice.

10.2 In the case of any outstanding Charges payable by the Customer, such Charges will be payable immediately by the Customer upon written notice by either party of termination.

10.3 The Data Protection Services cannot be terminated by either party, subject to clause 10.4 and 10.5, until after an initial period of 12 months has expired, starting from the Commencement Date of the service. Thereafter either party may give the other party 3 months written notice to terminate the Contract.

10.4 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

10.4.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;

10.4.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

10.4.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

10.4.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

10.5 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

10.5.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or

- 10.5.2 there is a change of Control of the Customer, or if it is realistically anticipated that it shall undergo a change of Control within the next two months.
- 10.6 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier without notice if:
- 10.6.1 the Customer fails to pay any amount due under the Contract on the due date for payment;
- 10.6.2 the Customer becomes subject to any of the events listed in clause 10.4.3 or clause 10.4.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them; and
- 10.6.3 the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 10.4.2.

11. Consequences of termination

- 11.1 On termination or expiry of the Contract:
- 11.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 11.1.2 the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 11.2 Termination or expiry of the Contract 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 Contract which existed at or before the date of termination or expiry.
- 11.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

12. General

- 12.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 12.2 **Assignment and other dealings.**
- 12.2.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

12.2.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

12.3 Confidentiality.

12.3.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.3.2.

12.3.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.3; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

12.4 Entire agreement.

12.4.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

12.4.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

12.4.3 Nothing in this clause shall limit or exclude any liability for fraud.

12.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

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

12.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and

enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 12.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

12.8 Notices.

12.8.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office or its principal place of business (in any other case); or sent by email to the address specified in the Statement of Work.

12.8.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) 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; or
- (c) if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 12.8.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

12.8.3 This clause 12.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

12.9 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

12.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England.

12.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.