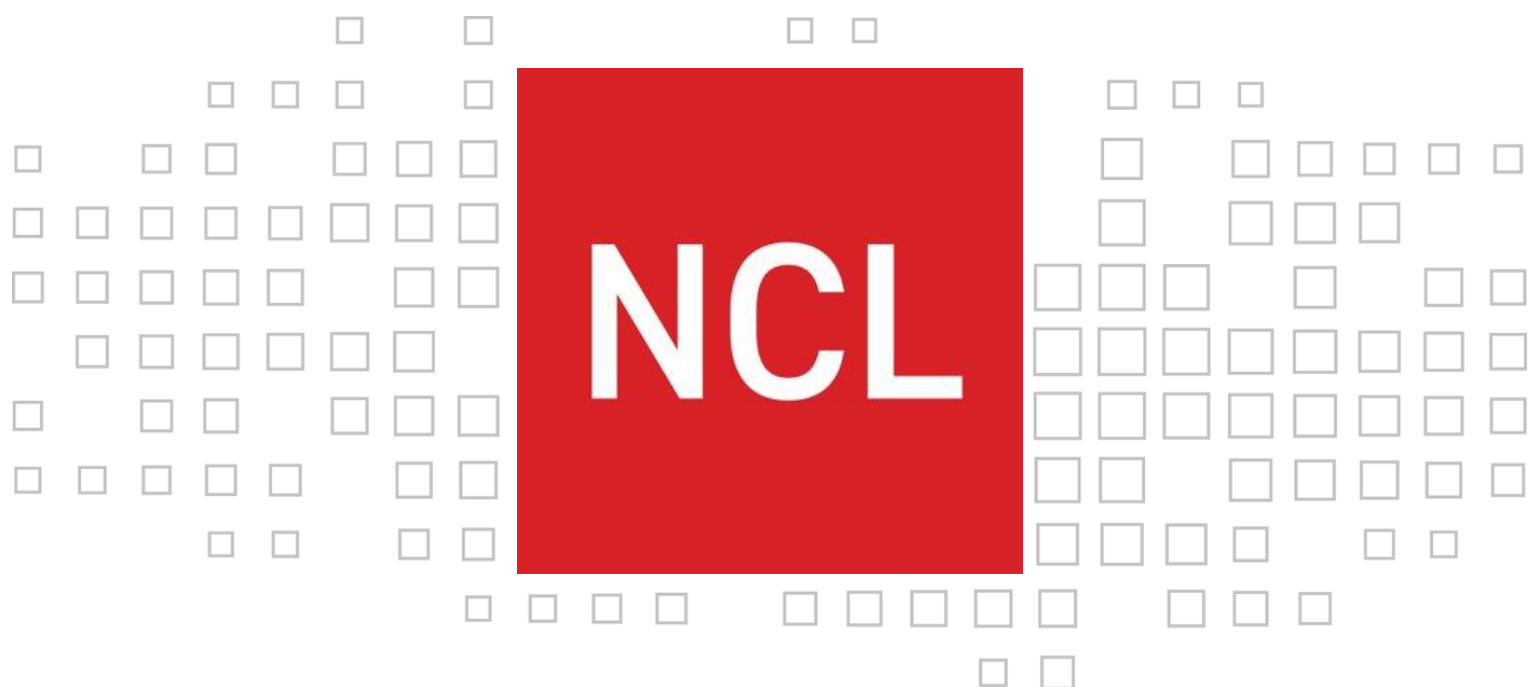




G-Cloud 15 Terms and Conditions

Commercial in Confidence

Net Consulting Ltd
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Registered in England & Wales No. 04764210

OFFICIAL

NET CONSULTING LIMITED – TECHNOLOGY SALE TERMS AND CONDITIONS

These terms and conditions of sale (these “**Conditions**”) govern the terms on which Net Consulting Limited, a company incorporated in England and Wales under number 04764210 whose registered office is at 4D (1st Floor) Greenmeadow Spring Business Park, Village Way, Cardiff, CF15 7NE (“**NCL**”) provides Goods (as defined below) to Customers (as defined below). These Conditions, together with any documents referred to herein, shall together constitute the contract between NCL and the Customer for the sale and purchase of Goods (the “**Contract**”).

AGREED TERMS

1. Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Affiliate: means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;

Bribery Laws: means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010, all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption, and any similar or equivalent legislation in any other relevant jurisdiction;

Business Day: means a day other than a Saturday, Sunday or bank or public holiday in England;

Confidential Information: means any commercial, financial or technical information, information relating to the Goods, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;

Control: means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company;

Customer: means the person who purchases the Goods from NCL and whose details are set out in the Order;

Delivery: means completion of delivery or collection (as applicable) of the Goods in accordance with clause 4.4;

Force Majeure: means an event or sequence of events beyond a party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required for performance of the Contract; strike, lockout or boycott or other industrial action including strikes or other industrial disputes involving NCL's or its suppliers workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;

Goods: means the goods and related accessories, spare parts and documentation (if any) and other physical material set out in the Order and to be supplied by NCL to the Customer;

Intellectual Property Rights: means copyright, patents, know-how, trade secrets, trade marks, trade names, rights in designs, rights in get-up, rights in goodwill, rights in confidential information, software rights and rights in software (including source code and object code), database rights and rights in data, rights to sue for passing off, domain names and all similar rights to which the relevant party is or may be entitled and, in each case:

- (a) whether registered or not;
- (b) including any applications to protect or register such rights;
- (c) including all renewals and extensions of such rights or applications;
- (d) whether vested, contingent or future; and
- (e) in whichever part of the world existing;

Order: means an order for the Goods placed by the Customer in such form as NCL may agree or approve from time to time;

Price: has the meaning given in clause 6.1;

Third Party Warranty: means any warranty documentation, in whatever form, provided by third party manufacturer and/or supplier (as the case may be) in relation to Goods; and

VAT: means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods.

1.2 In these Conditions, unless the context requires otherwise:

- 1.2.1 references to a gender includes each other gender;
- 1.2.2 references to the singular include the plural and vice versa;
- 1.2.3 references to clauses are to clauses of these Conditions;
- 1.2.4 clause headings in these Conditions do not effect their interpretation;
- 1.2.5 references to a "**party**" includes that party's personal representatives, successors and permitted assigns;
- 1.2.6 references to "**persons**" include individuals, unincorporated bodies, government entities, companies and corporations;
- 1.2.7 the words "**including**" or "**includes**" mean including or includes without limitation;
- 1.2.8 a reference to "**in writing**" or "**written**" includes any method of reproducing words in a legible form including manuscript, telexes, facsimiles, emails, communications in Braille, and other permanent forms of communication;

- 1.2.9 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
 - 1.2.10 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract; and
 - 1.2.11 a reference to legislation includes all subordinate legislation made from time to time under that legislation.
- 1.3 In the event of a conflict between the provisions of an Order and those of these Conditions, the provisions of the Order control and take precedence over the provisions of these Conditions but these Conditions are not otherwise amended, waived or released.

2. Application of these Conditions

- 2.1 These Conditions apply to and form part of the Contract between NCL and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that NCL otherwise agrees in writing.
- 2.3 No variation of these Conditions or to an Order or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of NCL.

3. Ordering

- 3.1 The Customer shall submit Orders to NCL for the purchase of Goods from NCL. Each Order by the Customer to NCL shall be an offer to purchase Goods subject to these Conditions. The Customer may withdraw or amend an Order at any time before acceptance by NCL.
- 3.2 The offer constituted by an Order shall remain in effect and be capable of being accepted by NCL for ten (10) Business Days from the date on which the Customer submitted the Order. If NCL has not accepted the Order within this period then the Order shall automatically lapse and be withdrawn.
- 3.3 If NCL is unable to accept an Order, it shall notify the Customer as soon as reasonably practicable.
- 3.4 NCL may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Goods shall arise, until the earlier of:
 - 3.4.1 NCL's written acceptance of the Order; or
 - 3.4.2 NCL dispatching the Goods or notifying the Customer that they are available for collection (as the case may be).

- 3.5 Rejection by NCL of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 3.6 NCL may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They do not form part of the Contract, are not an offer to supply Goods, and are incapable of being accepted by the Customer.
- 3.7 Marketing and other promotional material relating to the Goods are illustrative only. Such materials do not form part of the Contract, are not an offer to supply Goods, and are incapable of being accepted by the Customer.

4. Delivery

- 4.1 An Order shall specify whether the Goods are to be:
 - 4.1.1 delivered by NCL, or by a carrier appointed by NCL, to the applicable delivery location specified in the Order ("**Delivery Location**"); or
 - 4.1.2 made available for collection by the Customer, or by a carrier appointed by the Customer, at the applicable collection location set out in the Order ("**Collection Location**").
- 4.2 In respect of Orders that are accepted by NCL under clause 3, NCL will use its reasonable endeavours to either:
 - 4.2.1 deliver, or procure the delivery of, the Goods to the Delivery Location by the applicable delivery date notified by NCL to the Customer; or
 - 4.2.2 make the Goods available for collection at the Collection Location within the applicable collection period notified by NCL to the Customer ("**Collection Period**"), in which case the Customer shall collect (or procure the collection of) the Goods from such Collection Location within the Collection Period.
- 4.3 The Goods may be delivered, or made available for collection, by instalments if specified in the Order. Any delay in delivery or collection or any defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.4 The Goods shall be deemed delivered:
 - 4.4.1 if delivered by NCL under clause 4.1.1, on arrival of the Goods at the Delivery Location; or
 - 4.4.2 if delivered by a carrier under clause 4.1.1, on delivery of the Goods by NCL to the carrier; or
 - 4.4.3 if collected by the Customer (or the Customer's carrier) under clause 4.1.2, when NCL makes the Goods available for collection at the Collection Location.
- 4.5 The Customer shall not be entitled to reject any delivery of Goods on the basis that an incorrect volume of Goods has been supplied provided the volumes are within the tolerances (if any) set out in the Order.

- 4.6 Delivery of the Goods shall be accompanied by a delivery note stating:
 - 4.6.1 [the date of the Order;
 - 4.6.2 the product numbers, type and quantity of Goods in the consignment; and
 - 4.6.3 any special handling instructions.]
- 4.7 Time of delivery is not of the essence. NCL shall use its reasonable endeavours to meet delivery dates but such dates are approximate only.
- 4.8 NCL shall not be liable for any delay in or failure of delivery caused by:
 - 4.8.1 the Customer's failure to: (i) make the Delivery Location available, (ii) prepare the Delivery Location as required for delivery and/or installation of the Goods (as applicable) or (iii) provide NCL with adequate instructions for delivery and installation of, or otherwise relating to, the Goods;
 - 4.8.2 the Customer's failure to collect the Goods from the Collection Location; or
 - 4.8.3 Force Majeure.
- 4.9 If the Customer fails to accept delivery of or fails to collect (as applicable) the Goods then NCL shall store and insure the Goods pending such delivery or collection, and the Customer shall pay all costs and expenses incurred by NCL in doing so.
- 4.10 If ten (10) Business Days following the due date for delivery or expiry of the Collection Period (as applicable) of the Goods, the Customer has not taken delivery of or collected them, NCL may resell or otherwise dispose of the Goods. NCL shall:
 - 4.10.1 deduct reasonable storage charges and costs of resale; and
 - 4.10.2 account to the Customer for any excess of the resale price over, or invoice the Customer for any shortfall of the resale price below, the Price paid by the Customer for the Goods.

5. Risk and title

- 5.1 Risk in the Goods shall pass to the Customer on Delivery.
- 5.2 Title to the Goods shall pass to the Customer once NCL has received payment in full and cleared funds for the Goods.
- 5.3 Until NCL has received payment in full and cleared funds for the Goods, such Goods shall remain the sole and absolute property of NCL both in law and in equity and the Customer shall:
 - 5.3.1 hold the Goods as bailee for NCL;
 - 5.3.2 store the Goods separately from all other material in the Customer's possession;
 - 5.3.3 take all reasonable care of the Goods and keep them in the condition in which they were delivered;

- 5.3.4 insure the Goods from the date of Delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting NCL's interest on the policy;
 - 5.3.5 ensure that the Goods are clearly identifiable as belonging to NCL;
 - 5.3.6 not remove or alter any mark on or packaging of the Goods;
 - 5.3.7 inform NCL immediately if it becomes subject to any of the events or circumstances set out in clauses 17.1.3 or 17.1.4; and
 - 5.3.8 on reasonable notice permit NCL to inspect the Goods during the Customer's normal business hours and provide NCL with such information concerning the Goods as NCL may request from time to time.
- 5.4 Notwithstanding clause 5.3, the Customer may use or resell the Goods in the ordinary course of its business until such time as it becomes aware or ought reasonably to have become aware that an event specified in clauses 17.1.3 or 17.1.4 has occurred or is likely to occur.
- 5.5 If the Customer resells the Goods in accordance with clause 5.4, title to the Goods shall pass to the Customer immediately prior to the resale.
- 5.6 If, at any time before title to the Goods has passed to the Customer, the Customer informs NCL, or NCL reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses 17.1.3 or 17.1.4, NCL may:
- 5.6.1 require the Customer at the Customer's expense to re-deliver the Goods to NCL; and
 - 5.6.2 if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

6. Price

- 6.1 The price for the Goods shall be as set out in the Order or, in default of such provision, shall be calculated in accordance with NCL's scale of charges in force from time to time ("**Price**").
- 6.2 The Prices are exclusive of:
- 6.2.1 VAT.
- 6.3 The Customer shall pay any applicable VAT to NCL on receipt of a valid VAT invoice.
- 6.4 NCL may increase the Prices at any time by giving the Customer not less than fifteen (15) Business Days' notice in writing provided that the increase does not exceed five percent (5%) of the Prices in effect immediately prior to the increase.
- 6.5 If, at the time of a Price variation under clause 6.4, an Order has been submitted by the Customer but has not yet been accepted by NCL then NCL shall notify the Customer of the Price variation and seek written confirmation from the Customer (which may be given by email) that the Customer wishes to go ahead with the Order at the new Price. If the Customer confirms that it wishes to go ahead at the new Price then the relevant Order shall be adjusted accordingly. If the Customer does not

confirm that it wishes to go ahead at the new Price within a reasonable time (being no longer than five (5) Business Days from NCL's notification of the Price variation) then the relevant Order shall be deemed to have been withdrawn by the Customer.

- 6.6 Notwithstanding clauses 6.4 and 6.5, NCL may increase the Prices with immediate effect by written notice to the Customer where there is an increase in the direct cost to NCL of supplying the relevant Goods which exceeds five percent (5%) and which is due to any factor beyond the control of NCL.

7. Payment

- 7.1 NCL shall raise, and the Customer shall pay, invoices in respect of the Goods in accordance with the payment terms set out in the applicable Order. If no payment terms are set out in such Order then:

- 7.1.1 NCL shall invoice the Customer for the Goods at any time after Delivery; and
- 7.1.2 the Customer shall pay each and every invoice in full, without deduction or set-off and in clear funds, within thirty (30) days of the date of each invoice.

- 7.2 The Customer shall pay all invoices to the bank account nominated by NCL in writing.

- 7.3 Time of payment is of the essence. Where sums due under this Contract are not paid in full by the due date:

- 7.3.1 NCL may, without limiting its other rights, charge interest on such sums at four percent (4%) a year above the base rate of the Bank of England from time to time in force; and
- 7.3.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

8. Credit limit

- 8.1 NCL may set and vary credit limits from time to time. Any such credit limit or variation thereto shall be confirmed by NCL to the Customer in writing.
- 8.2 NCL shall be entitled to withhold all further supplies if the Customer exceeds such credit limit.

9. Warranty

- 9.1 The Customer hereby acknowledges and agrees that the Goods are sourced by NCL from third party manufacturers and/or suppliers. Subject to clause 9.4 below, NCL warrants that the Goods shall, for a period of three (3) months from Delivery (the "**Warranty Period**"):

- 9.1.1 conform in all material respects to the Order;
- 9.1.2 be free from material defects in design, material and workmanship; and
- 9.1.3 be of satisfactory quality within the meaning of the Sale of Goods Act 1979.

- 9.2 If a Third Party Warranty applies to any Goods to be supplied by NCL then NCL shall provide the relevant documentation together with the applicable Goods on Delivery thereof.
- 9.3 The Customer warrants that:
 - 9.3.1 it has provided NCL with all relevant, full and accurate information as to the Customer's business and needs; and
 - 9.3.2 it shall inspect the Goods on Delivery or as soon as reasonably practical after Delivery to confirm that they comply with the warranties set out in clause 9.1.
- 9.4 The warranties set out in clause 9.1 shall not apply, and NCL have no liability in respect of any failure of the Goods to comply with such warranties:
 - 9.4.1 if the applicable third party manufacturer and/or supplier (as applicable) has given warranties upon which the Customer can rely by virtue of a Third Party Warranty;
 - 9.4.2 if the Customer fails to inspect the Goods in accordance with clause 9.3.2 (however this shall not affect NCL's liability in respect of latent defects, for which see clause 9.5.1(b) below);
 - 9.4.3 if NCL or the applicable third party manufacturer and/or supplier have previously provided a sample of the Goods which the Customer has accepted and the Goods themselves conform with such sample in all material respects;
 - 9.4.4 where such failure arises by reason of wear and tear, wilful damage, negligence, or could be expected to arise in the normal course of use of the Goods;
 - 9.4.5 to the extent caused by the Customer's failure to comply with any reasonable instructions relating to the Goods, including any instructions on installation, operation, storage or maintenance, provided by either NCL or the applicable third party manufacturer and/or supplier;
 - 9.4.6 to the extent caused by NCL and/or the applicable third party manufacturer and/or supplier following any specification or requirement of the Customer in relation to the Goods;
 - 9.4.7 where the Customer modifies any Goods without the prior written consent of NCL or the applicable third party manufacturer and/or supplier (as applicable) or, having received such consent, the Customer modifies any Goods otherwise than in accordance with such consent; or
 - 9.4.8 where the Customer uses any of the Goods after notifying NCL that they do not comply with clause 9.1.
- 9.5 Subject to clause 9.4, NCL shall, at its option, repair, replace, or refund the Price of, any Goods that do not comply with clause 9.1, provided that the Customer:
 - 9.5.1 serves a written notice on NCL:

- (a) during the Warranty Period in the case of defects discoverable by a physical inspection; or
 - (b) in the case of latent defects, within one (1) month from the date on which the Customer became aware (or should reasonably have become aware) of such a defect;
- 9.5.2 provides NCL with sufficient information as to the nature and extent of the defects and the uses to which the Goods had been put prior to the defect arising;
- 9.5.3 gives NCL a reasonable opportunity to examine the defective Goods; and
- 9.5.4 returns the defective Goods to NCL at the Customer's expense.
- 9.6 The provisions of these Conditions, including the warranties set out in clause 9.1, shall apply to any Goods that are repaired or replaced in accordance with clause 9.5 with effect from Delivery of the repaired or replaced Goods.
- 9.7 Except as set out in this clause 9:
 - 9.7.1 NCL gives no warranties and makes no representations in relation to the Goods;
 - 9.7.2 NCL shall have no liability if any Goods fail to comply with any applicable Third Party Warranty; and
 - 9.7.3 all warranties and conditions (including the conditions implied by ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded in relation to NCL to the extent permitted by law.

10. Anti-bribery

- 10.1 For the purposes of this clause 10 the expressions "**adequate procedures**" and "**associated with**" shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 10.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:
 - 10.2.1 all of that party's personnel;
 - 10.2.2 all others associated with that party; and
 - 10.2.3 all of that party's subcontractors;
 involved in performing the Contract so comply.
- 10.3 Without limitation to clause 10.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

- 10.4 Each party shall immediately notify the other as soon as it becomes aware of a breach of any of the requirements in this clause 10.

11. Anti-slavery

- 11.1 The Customer undertakes, warrants and represents that:

11.1.1 neither the Customer nor any of its officers, employees, agents or subcontractors has:

- (a) committed an offence under the Modern Slavery Act 2015 (an “**MSA Offence**”); or
- (b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
- (c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

11.1.2 it shall comply with the Modern Slavery Act 2015; and

11.1.3 it shall notify NCL immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Customer's obligations under clause 11.1. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Customer's obligations.

- 11.2 Any breach of clause 11.1 by the Customer shall be deemed a material breach of the Contract and shall entitle NCL to terminate the Contract with immediate effect.

12. Indemnity and insurance

- 12.1 The Customer shall indemnify, and keep indemnified, NCL from and against any losses, damages, liability, costs (including legal fees) and expenses which NCL may suffer or incur directly or indirectly as a result of or in connection with the Customer's breach of any of its obligations under the Contract.

- 12.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under the Contract. On request, the Customer shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable. The Customer shall on request assign to NCL the benefit of such insurance.

13. Limitation of liability

- 13.1 Nothing in the Contract shall exclude either party's liability for:

13.1.1 death or personal injury resulting from the negligence of a party or its employees while acting in the course of their employment;

13.1.2 fraud or fraudulent misrepresentation; or

13.1.3 any other losses which cannot be excluded or limited by applicable law.

- 13.2 Subject to the provisions of clause 13.1, NCL's liability to the Customer whether in contract, tort (including negligence), misrepresentation (whether innocent or negligent), breach of statutory duty or otherwise arising out of or in connection with the Services, or other performance or non-performance of NCL's obligations under the Contract shall:
- 13.2.1 be limited to 100% of the aggregate of all payments paid or payable by the Customer under the Contract for the preceding twelve months, with interest thereon if applicable, in respect of any one incident or any series of incidents arising from a common cause; and
 - 13.2.2 not extend to:
 - (a) loss of profits, loss of revenue, loss of business, loss of goodwill, loss of contracts, loss of anticipated savings, loss of production or loss of or corruption to data; or
 - (b) any special, indirect or consequential loss or damage whatsoever.
- 13.3 The limitations of liability set out in clause 13.2 shall not apply in respect of any indemnities given by either party under the Contract, including (without limitation) the indemnities under clauses 12 (indemnity and insurance), 14 (intellectual property) and 15 (confidentiality).

14. Intellectual property

- 14.1 Except as expressly stated in this clause 14, no Intellectual Property Rights of either party are transferred or licensed as a result of the Contract.
- 14.2 Subject to any other terms expressly agreed by the parties in writing, each party grants to the other a licence of such of its Intellectual Property Rights as are necessary to enable the other party to fulfil its obligations under the Contract or make use of the Goods supplied under the Contract but not otherwise.
- 14.3 NCL shall indemnify the Customer from and against any losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that use or possession of the Goods infringes the Intellectual Property Rights of any third party ("**IPR Claim**"), provided that NCL shall have no such liability if the Customer:
- 14.3.1 does not notify NCL in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible;
 - 14.3.2 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of NCL;
 - 14.3.3 does not let NCL at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;
 - 14.3.4 does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim; or
 - 14.3.5 does not, at NCL's request, provide NCL with all reasonable assistance in relation to the IPR Claim (at the Customer's expense) including the provision

of prompt access to any relevant premises, officers, employees, contractors or agents of the Customer.

- 14.4 If any IPR Claim is made or is reasonably likely to be made, NCL may at its option:
- 14.4.1 procure for the Customer the right to continue using and possessing the relevant Goods; or
 - 14.4.2 modify or replace the infringing part of the Goods so as to avoid the infringement or alleged infringement, provided the Goods remain in material conformance to their specification.
- 14.5 NCL's obligations under clause 14.3 shall not apply to Goods modified or used by the Customer other than in accordance with the Contract or NCL's instructions. The Customer shall indemnify NCL against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by NCL in connection with any claim arising from such modification or use.

15. Confidentiality and announcements

- 15.1 The Customer shall keep confidential all Confidential Information of NCL and of any Affiliate of NCL that is disclosed to it or otherwise becomes known to it and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 15.1.1 any information which was in the public domain at the date of the Contract;
 - 15.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - 15.1.3 any information which is independently developed by the Customer without using information supplied by NCL or by any Affiliate of NCL; or
 - 15.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 15.2 This clause 15 shall remain in force for a period of five (5) years from the date of the Contract and, if longer, three (3) years after termination of the Contract.
- 15.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.
- 15.4 The Customer shall indemnify and keep indemnified and hold harmless NCL from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by NCL arising from or in connection with any breach by the Customer of this clause 15.

16. Force Majeure

- 16.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:

- 16.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and
- 16.1.2 uses best endeavours to minimise the effects of that event.

16.2 If, due to Force Majeure, a party:

- 16.2.1 is or shall be unable to perform a material obligation; or
- 16.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding fourteen (14) days or a total of more than thirty (30) days in any consecutive period of sixty (60) days;

the parties shall, if requested by the party not affected by the Force Majeure within thirty (30) days, renegotiate the Contract to achieve, as nearly as possible, the original commercial intent.

17. Termination

17.1 NCL may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:

17.1.1 commits:

- (a) a material breach of the Contract (other than failure to pay); or
- (b) a series of breaches (other than failure to pay) which together may reasonably be considered to constitute a material breach of the Contract,

and such breach is not remediable or, if capable of remedy, is not remedied within twenty (20) Business Days of receiving written notice to do so; or

17.1.2 has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within thirty (30) days after NCL has given notification that the payment is overdue; or

17.1.3 is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the Customer (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the Customer's assets or the Customer enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction; or

17.1.4 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clause 17.1.3 including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.

- 17.2 NCL may terminate the Contract any time by giving not less than four (4) weeks' notice in writing to the Customer if the Customer undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two (2) months.
- 17.3 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle NCL to terminate the Contract under this clause 17, it shall immediately notify NCL in writing.
- 17.4 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of NCL at any time up to the date of termination.

18. Dispute resolution

- 18.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 18.
- 18.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 18.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
 - 18.3.1 within five (5) Business Days of service of the notice, the applicable contract managers of the parties shall meet to discuss the dispute and attempt to resolve it; and
 - 18.3.2 if the dispute has not been resolved within ten (10) Business Days of the first meeting of the contract managers, then the matter shall be referred to the chief executives (or persons of equivalent seniority). The chief executives (or equivalent) shall meet within a further five (5) Business Days to discuss the dispute and attempt to resolve it.
- 18.4 The specific format for the resolution of the dispute under clause 18.3.1 and, if necessary, clause 18.3.2 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.
- 18.5 If the dispute has not been resolved within ten (10) Business Days of the first meeting of the chief executives (or equivalent) under clause 18.3.2 then the matter may be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules (http://www.lcia.org/Dispute_Resolution_Services/LCIA_Mediation_Rules.aspx).
- 18.6 Until the parties have completed the steps referred to in clauses 18.3 and 18.5, and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief from the courts or emergency arbitrator relief.

19. Notices

- 19.1 Notices under the Contract will be in writing and sent to the relevant party's address above. Alternatively, notices may be sent to any address or email address as previously notified in writing by a party to the other for the purposes of this clause 19.

- 19.2 Notices may be given, and are deemed received:
- 19.2.1 by first class post: two (2) Business Days after posting;
 - 19.2.2 by airmail: seven (7) Business Days after posting;
 - 19.2.3 by hand: on delivery; or
 - 19.2.4 by e-mail: on receipt of a delivery confirmation notification from the correct email address of the intended recipient confirming that the notice has been sent to that email address.
- 19.3 In proving the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication was addressed and despatched and despatch of the transmission was confirmed and/or acknowledged, as the case may be.
- 19.4 This clause does not apply to notices given in legal proceedings or arbitration.

20. Entire agreement

- 20.1 The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 20.2 Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
- 20.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

21. Assignment

- 21.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without NCL's prior written consent, such consent not to be unreasonably withheld or delayed.
- 21.2 NCL may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate, associate or sub-contractor. NCL acknowledges and agrees that any act or omission of such Affiliate, associate or sub-contractor in relation to NCL's rights or obligations under the Contract shall be deemed to be an act or omission of NCL itself.

22. Set off

- 22.1 NCL shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which NCL has with the Customer.
- 22.2 The Customer shall pay all sums that it owes to NCL under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

23. Equitable relief

The Customer recognises that any breach or threatened breach of the Contract may cause NCL irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to NCL, the Customer acknowledges and agrees that NCL is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

24. Compliance with law

The Customer shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

25. Third party rights

- 25.1 Except as expressly provided for in clause 25.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
- 25.2 Any Affiliate of NCL shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

26. General

- 26.1 Amendment – the Contract may only be amended in writing signed by duly authorised representatives of each of the parties. Such amendment will only take effect when signed by duly authorised representatives of each of the parties.
- 26.2 Survival – provisions which either expressly provide or by their very nature are intended to survive termination of the Contract shall do so.
- 26.3 Waiver – unless otherwise agreed in writing, no delay, act or omission by either party in exercising any right or remedy, or any single or partial exercise of any such right or remedy, will be deemed a waiver of that or any other right or remedy or prevent any future or further exercise of it.
- 26.4 Relationship – the parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.
- 26.5 Time – unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.
- 26.6 Further assurance – the Customer shall at the request of NCL, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.
- 26.7 Severance – if any provision of the Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall be deemed amended to

the minimum extent required to make it legal, valid and enforceable but if such amendment is not possible such provision shall instead, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and in either case such provision shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.

- 26.8 Cumulative remedies – the rights and remedies provided in the Contract for NCL only are cumulative and not exclusive of any rights and remedies provided by law.

27. Governing law

The Contract and any dispute or claim arising out of, or in connection with, it, 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.

28. Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).

NET CONSULTING LIMITED – PROFESSIONAL SERVICES TERMS AND CONDITIONS

These terms and conditions of supply (these “**Conditions**”) govern the terms on which Net Consulting Limited, a company incorporated in England and Wales under number 04764210 whose registered office is at 4c Greenmeadow Spring Business Park, Village Way, Cardiff, CF15 7NE (“**NCL**”) provides Services (as defined below) to Customers (as defined below). These Conditions, together with any documents referred to herein, shall together constitute the contract between NCL and the Customer for the supply and purchase of services (the “**Contract**”).

AGREED TERMS

1. Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Additional Work: has the meaning given in clause 8;

Affiliate: means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;

Bribery Laws: means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010, all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption, and any similar or equivalent legislation in any other relevant jurisdiction;

Business Day: means a day other than a Saturday, Sunday or bank or public holiday in England;

Confidential Information: means any commercial, financial or technical information, information relating to the Services, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;

Control: means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company;

Customer: means the person who purchases the Services from NCL and whose details are set out in the Order;

Force Majeure: means an event or sequence of events beyond a party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including strikes or other industrial disputes involving NCL's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;

Good Industry Practice: means the exercise of that degree of care, diligence and skill which would reasonably and ordinarily be expected from a skilled, professional and

experienced person engaged in the same type of undertaking under the same or similar circumstances;

Intellectual Property Rights: means copyright, patents, know-how, trade secrets, trade marks, trade names, rights in designs, rights in get-up, rights in goodwill, rights in confidential information, software rights and rights in software (including source code and object code), database rights and rights in data, rights to sue for passing off, domain names and all similar rights to which the relevant party is or may be entitled and, in each case:

- (a) whether registered or not;
- (b) including any applications to protect or register such rights;
- (c) including all renewals and extensions of such rights or applications;
- (d) whether vested, contingent or future; and
- (e) in whichever part of the world existing;

Location: means the address(es) for performance of the Services as set out in the Order;

Order: means a written order for Services placed by the Customer, in such form as NCL may agree or approve from time to time;

Price: has the meaning set out in clause 7.1;

Services: means the services set out in an Order, including those services reasonably understood by the parties to be necessary to complete that Order and to be performed by NCL for the Customer, but not including any Additional Work; and

VAT: means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Services.

1.2 In these Conditions, unless the context requires otherwise:

- 1.2.1 references to a gender includes each other gender;
- 1.2.2 references to the singular include the plural and vice versa;
- 1.2.3 references to clauses are to clauses of this Agreement;
- 1.2.4 clause headings in these Conditions do not effect their interpretation;
- 1.2.5 references to a "**party**" includes that party's personal representatives, successors and permitted assigns;
- 1.2.6 references to "**persons**" include individuals, unincorporated bodies, government entities, companies and corporations;
- 1.2.7 the words "**including**" or "**includes**" mean including or includes without limitation;

- 1.2.8 a reference to “**in writing**” or “**written**” includes any method of reproducing words in a legible form including manuscript, telexes, facsimiles, emails, communications in Braille, and other permanent forms of communication;
 - 1.2.9 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
 - 1.2.10 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract; and
 - 1.2.11 a reference to legislation includes all subordinate legislation made from time to time under that legislation.
- 1.3 In the event of a conflict between the provisions of an Order and those of these Terms, the provisions of the Order control and take precedence over the provisions of these Terms but these Terms are not otherwise amended, waived or released.

2. Application of these Conditions

- 2.1 These Conditions apply to and form part of the Contract between NCL and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that NCL otherwise agrees in writing.
- 2.3 No variation of these Conditions or of an Order or of the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of NCL.

3. Ordering

- 3.1 The Customer will submit Orders to NCL. Each Order shall be an offer to purchase Services subject to these Conditions. The Customer may withdraw or amend an Order at any time before acceptance by NCL.
- 3.2 The offer constituted by an Order shall remain in effect and be capable of being accepted by NCL for ten (10) Business Days from the date on which the Customer submitted the Order. If NCL has not accepted the Order within this period then the Order shall automatically lapse and be withdrawn.
- 3.3 If NCL is unable to accept an Order, it shall notify the Customer as soon as reasonably practicable.
- 3.4 NCL may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Services shall arise, until the earlier of:
 - 3.4.1 NCL's written acceptance of the Order; or
 - 3.4.2 NCL performing the Services or notifying the Customer that they are ready to be performed (as the case may be).

- 3.5 Rejection by NCL of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 3.6 NCL may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They do not form part of the Contract, are not an offer to supply Services, and are incapable of being accepted by the Customer.
- 3.7 Marketing and other promotional material relating to the Services are illustrative only. Such materials do not form part of the Contract, are not an offer to supply Services, and are incapable of being accepted by the Customer.

4. Performance

- 4.1 In respect of Orders that are accepted by NCL under clause 3.4, NCL will use its reasonable endeavours to perform the Services in accordance with the terms of the Contract.
- 4.2 An Order shall specify whether the Services are to be:
 - 4.2.1 performed at the Location on the date(s) specified in the Order; or
 - 4.2.2 performed at an alternative premises set out in the Order (as the case may be). The Customer shall make such premises available for NCL so that NCL is able to make the Services available to be performed within the period set out in the Order.
- 4.3 The Services shall be deemed performed on completion of the performance of the Services as specified in the Order.
- 4.4 NCL may perform the Services in instalments. Any delay in performance or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.5 Time of performance of the Services is not of the essence. NCL shall use its reasonable endeavours to meet any estimated dates for performance, but any such dates are approximate only.
- 4.6 NCL shall not be liable for any delay in or failure of performance caused by:
 - 4.6.1 the Customer's failure to: (i) make the Location available, (ii) prepare the Location as reasonably required for performance of the Services or (iii) provide NCL with adequate instructions for performance or otherwise relating to the Services; or
 - 4.6.2 Force Majeure.

5. NCL Warranties

- 5.1 NCL warrants to the Customer that:
 - 5.1.1 it has the right, power and authority to enter into the Contract, to grant to the Customer the rights (if any) contemplated in these Conditions, and to supply the Services;

- 5.1.2 the Services do not and shall not infringe the Intellectual Property Rights of any third party; and
- 5.1.3 any Services shall:
 - (a) conform in all material respects to their description as set out in the Order;
 - (b) be free from material defects; and
 - (c) be supplied with reasonable care and skill in accordance with Good Industry Practice.
- 5.2 NCL shall, at its option, remedy, re-perform or refund the Services that do not comply with clause 5.1.3, provided that:
 - 5.2.1 the Customer serves a written notice on NCL not later than five (5) Business Days from performance in the case of defects discoverable by a physical inspection, or within a reasonable period of time from performance in the case of latent defects; and
 - 5.2.2 such notice specifies that some or all of the Services do not comply with clause 5.1.3 and identifies in sufficient detail the nature and extent of the defects; and
 - 5.2.3 the Customer gives NCL a reasonable opportunity to examine the claim of the defective Services.
- 5.3 The provisions of these Conditions shall apply to any Services that are remedied or re-performed with effect from performance of the remedied or re-performed Services.
- 5.4 Except as set out in this clause 5:
 - 5.4.1 NCL gives no warranties and makes no representations in relation to the Services; and
 - 5.4.2 shall have no liability for their failure to comply with the warranty in clause 5.1.3,

and all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 5.5 The Customer shall be entitled to exercise its rights under clause 5 notwithstanding that the Services were not rejected following any initial inspection.
- 6. Customer warranties**
- 6.1 The Customer warrants to NCL that:
 - 6.1.1 the Customer has the right, power and authority to enter into the Contract, to grant to NCL the rights (if any) contemplated in these Conditions, and to receive the Services;

- 6.1.2 the computer and operating system and any other hardware or software of or controlled by the Customer which NCL is asked to use or modify as part of or for the purpose of providing the Services are either the property of the Customer or are legally licensed to the Customer; and
- 6.1.3 the Customer has provided and/or will provide NCL with:
 - (a) reasonable access, as required, to premises and facilities owned or controlled by the Customer;
 - (b) reasonable access to the Customer's software, systems and data; and
 - (c) all relevant information, instructions and assistance, including reasonable access to and cooperation by Customer personnel,

in each case as reasonably necessary for NCL to perform its obligations under the Contract.
- 6.2 The Customer acknowledges and agrees that the Services are provided at the Customer's request and the Customer is responsible for verifying that the Services are suitable for its needs.
- 7. Price**
 - 7.1 The price for the Services shall be as set out in the Order or, in default of such provision, shall be calculated in accordance with NCL's scale of charges in force from time to time ("**Price**").
 - 7.2 The Prices are exclusive of:
 - 7.2.1 Travel and Subsistence Expenses which shall be charged in addition at NCL's then-standard rates; and
 - 7.2.2 VAT.
 - 7.3 The Customer shall pay any applicable VAT to NCL on receipt of a valid VAT invoice.
 - 7.4 NCL may increase the Prices at any time by giving the Customer not less than fifteen (15) Business Days' notice in writing provided that the increase does not exceed five percent (5%) of the Prices in effect immediately prior to the increase.
 - 7.5 If, at the time of a Price variation under clause 7.4, an Order has been submitted by the Customer but has not yet been accepted by NCL then NCL shall notify the Customer of the Price variation and seek written confirmation from the Customer (which may be given by email) that the Customer wishes to go ahead with the Order at the new Price. If the Customer confirms that it wishes to go ahead at the new Price then the relevant Order shall be adjusted accordingly. If the Customer does not confirm that it wishes to go ahead at the new Price within a reasonable time (being no longer than five (5) Business Days from NCL's notification of the Price variation) then the relevant Order shall be deemed to have been withdrawn by the Customer.
 - 7.6 Notwithstanding clauses 7.4 and 7.5, NCL may increase the Prices with immediate effect by written notice to the Customer where there is an increase in the direct cost

to NCL of supplying the relevant Services which exceeds five percent (5%) and which is due to any factor beyond the control of NCL.

8. Additional work

- 8.1 If NCL, at the Customer's express request, carries out any work which falls outside the Services pursuant to an Order ("**Additional Work**") then, subject to this clause 8, the provisions of this Contract will apply to such Additional Work.
- 8.2 If no fee is agreed for Additional Work then, unless the parties otherwise agree in writing, NCL shall be paid for such Additional Work on a time and materials basis at NCL's then-current standard rates.
- 8.3 If no separate payment terms are agreed in respect of Additional Work then, unless the parties otherwise agree in writing, fees for such Additional Work shall be subject to the same payment terms as the Price under clause 9.
- 8.4 Any dispute as to whether any requested work constitutes Additional Work or should instead form part of the Services shall be decided by NCL acting in its reasonable discretion and in accordance with Good Industry Practice.

9. Payment

- 9.1 NCL shall raise, and the Customer shall pay, invoices in respect of the Services in accordance with the payment terms set out in the applicable Order. If no payment terms are set out in such Order then:
 - 9.1.1 NCL shall be entitled to raise invoices in respect of the Services at any time after commencement of performance of those Services; and
 - 9.1.2 the Customer shall pay each and every invoice in full, without deduction or set-off and in clear funds, within thirty (30) days of the date of that invoice.
- 9.2 The Customer shall pay all invoices to the bank account nominated by NCL in writing.
- 9.3 Time of payment is of the essence. Where sums due under this Contract are not paid in full by the due date:
 - 9.3.1 NCL may, without limiting its other rights, charge interest on such sums at four percent (4%) a year above the base rate of the Bank of England from time to time in force, and
 - 9.3.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

10. Credit limit

- 10.1 NCL may set and vary credit limits from time to time. Any such credit limit or variation thereto shall be confirmed by NCL to the Customer in writing.
- 10.2 NCL shall be entitled to withhold all further supplies if the Customer exceeds such credit limit.

11. Anti-bribery

- 11.1 For the purposes of this clause 11 the expressions “**adequate procedures**” and “**associated with**” shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 11.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:
- 11.2.1 all of that party's personnel;
 - 11.2.2 all others associated with that party; and
 - 11.2.3 all of that party's subcontractors;
- involved in performing the Contract so comply.
- 11.3 Without limitation to clause 11.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 11.4 Each party shall immediately notify the other as soon as it becomes aware of a breach of any of the requirements in this clause 11.

12. Anti-slavery

- 12.1 The Customer undertakes, warrants and represents that:
- 12.1.1 neither the Customer nor any of its officers, employees, agents or subcontractors has:
 - (a) committed an offence under the Modern Slavery Act 2015 (an “**MSA Offence**”); or
 - (b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - (c) is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
 - 12.1.2 it shall comply with the Modern Slavery Act 2015; and
 - 12.1.3 it shall notify NCL immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of Customer's obligations under clause 12.1. Such notice shall set out full details of the circumstances concerning the breach or potential breach of the Customer's obligations.
- 12.2 Any breach of clause 12.1 by the Customer shall be deemed a material breach of the Contract and shall entitle NCL to terminate the Contract with immediate effect.

13. Indemnity and insurance

- 13.1 The Customer shall indemnify, and keep indemnified, NCL from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by NCL as a result of or in connection with the Customer's breach of any of the Customer's obligations under the Contract.
- 13.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under these Conditions. On request, the Customer shall supply, so far as is reasonable, evidence of the maintenance of the insurance and all of its terms from time to time applicable. The Customer shall on request assign to NCL the benefit of such insurance.

14. Limitation of liability

- 14.1 Nothing in the Contract shall exclude or restrict either party's liability for:
 - 14.1.1 death or personal injury resulting from the negligence of a party or its employees while acting in the course of their employment;
 - 14.1.2 fraud or fraudulent misrepresentation; or
 - 14.1.3 any other losses which cannot be excluded or limited by applicable law.
- 14.2 Subject to the provisions of clause 14.1, NCL's liability to the Customer whether in contract, tort (including negligence), misrepresentation (whether innocent or negligent), breach of statutory duty or otherwise arising out of or in connection with the Services, or other performance or non-performance of NCL's obligations under the Contract shall:
 - 14.2.1 be limited to 100% of the aggregate of all payments paid or payable by the Customer under the Contract for the preceding twelve months, with interest thereon if applicable, in respect of any one incident or any series of incidents arising from a common cause; and
 - 14.2.2 not extend to:
 - (a) loss of profits, loss of revenue, loss of business, loss of goodwill, loss of contracts, loss of anticipated savings, loss of production or loss of or corruption to data; or
 - (b) any special, indirect or consequential loss or damage whatsoever.
- 14.3 The limitations of liability set out in clause 14.2 shall not apply in respect of any indemnities given by either party under this Agreement, including (without limitation) the indemnities under clauses 13 (indemnity and insurance), 15 (IPR Claims) and 16 (confidentiality).

15. Intellectual property

- 15.1 Except as expressly stated in this clause 15, no Intellectual Property Rights of either party are transferred or licensed as a result of the Contract.
- 15.2 Subject to any other terms expressly agreed by the parties in writing, each party grants to the other a licence of such of its Intellectual Property Rights as are necessary

to enable the other party to fulfil its obligations under the Contract or make use of the Services supplied under the Contract but not otherwise.

- 15.3 NCL shall indemnify the Customer from and against any losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that the performance or the benefit of the Services infringes the Intellectual Property Rights of any third party ("**IPR Claim**"), provided that NCL shall have no such liability if the Customer:
- 15.3.1 does not notify NCL in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible;
 - 15.3.2 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of NCL;
 - 15.3.3 does not let NCL at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;
 - 15.3.4 does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim; or
 - 15.3.5 does not, at NCL's request and expense, provide NCL with all reasonable assistance in relation to the IPR Claim including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Customer.
- 15.4 If any IPR Claim is made or is reasonably likely to be made, NCL may at its option:
- 15.4.1 procure for the Customer the right to continue receiving the benefit of the relevant Services; or
 - 15.4.2 modify or replace the infringing part of the Services so as to avoid the infringement or alleged infringement, provided the Services remain in material conformance to their specification.
- 15.5 NCL's obligations under clause 15.3 shall not apply to Services modified or used by the Customer other than in accordance with the Contract or NCL's reasonable instructions. The Customer shall indemnify NCL against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by NCL in connection with any claim arising from such modification or use.

16. Confidentiality and announcements

- 16.1 The Customer shall keep confidential all Confidential Information of NCL and of any Affiliate of NCL that is disclosed to it or otherwise becomes known to it and shall only use the same as required for the performance of the Contract. The provisions of this clause shall not apply to:
- 16.1.1 any information which was in the public domain at the date of the Contract;
 - 16.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;

- 16.1.3 any information which is independently developed by the Customer without using information supplied by NCL or by any Affiliate of NCL; or
- 16.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 16.2 This clause shall remain in force for a period of five (5) years from the date of the Contract and, if longer, three (3) years after termination of the Contract.
- 16.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.
- 16.4 The Customer shall indemnify and keep indemnified and hold harmless NCL from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by NCL arising from or in connection with any breach by the Customer of this clause 16.

17. Force Majeure

- 17.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
 - 17.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and
 - 17.1.2 uses best endeavours to minimise the effects of that event.
- 17.2 If, due to Force Majeure, a party:
 - 17.2.1 is or shall be unable to perform a material obligation; or
 - 17.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding ten (10) Business Days or a total of more than thirty (30) days in any consecutive period of sixty (60) days;

the parties shall, if requested by the party not affected by the Force Majeure within thirty (30) days, renegotiate the Contract to achieve, as nearly as possible, the original commercial intent.

18. Termination

- 18.1 NCL may terminate the Contract at any time by giving notice in writing to the Customer if:
 - 18.1.1 the Customer commits a material breach of Contract (other than failure to pay) and such breach is not remediable;
 - 18.1.2 the Customer commits a material breach of the Contract (other than failure to pay) which is not remedied within ten (10) Business Days of receiving written notice of such breach;
 - 18.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within thirty (30) days after NCL has given notification that the payment is overdue;

- 18.1.4 the Customer is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the Customer (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the Customer's assets or the Customer enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction; or
- 18.1.5 the Customer takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clause 18.1.4 including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 18.2 NCL may terminate the Contract any time by giving not less than four (4) weeks' notice in writing to the Customer if the Customer undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two (2) months.
- 18.3 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle NCL to terminate the Contract under this clause 18, it shall immediately notify NCL in writing.
- 18.4 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of NCL at any time up to the date of termination.

19. Dispute resolution

- 19.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 19.
- 19.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 19.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
 - 19.3.1 within five (5) Business Days of service of the notice, the applicable contract managers of the parties shall meet and/or communicate (as appropriate) to discuss the dispute and attempt to resolve it; and
 - 19.3.2 if the dispute has not been resolved within ten (10) Business Days of the first meeting of the contract managers, then the matter shall be referred to the Managing Director (or persons of equivalent seniority). The Managing Director (or equivalent) shall meet within a further five (5) Business Days to discuss the dispute and attempt to resolve it.
- 19.4 The specific format for the resolution of the dispute under clause 19.3.1 and, if necessary, clause 19.3.2 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.

- 19.5 If the dispute has not been resolved within ten (10) Business Days of the first meeting of the chief executives (or equivalent) under clause 19.3.2 then the matter may be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.
- 19.6 Until the parties have completed the steps referred to in clauses 19.3 and 19.5, and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief from the courts or emergency arbitrator relief.

20. Notices

- 20.1 Notices under this Agreement will be in writing and sent to the relevant party's address above. Alternatively, notices may be sent to any address or email address as previously notified in writing by a party to the other for the purposes of this clause 20.
- 20.2 Notices may be given, and will be deemed received:
- 20.2.1 by first class post: two (2) Business Days after posting;
 - 20.2.2 by airmail: seven (7) Business Days after posting;
 - 20.2.3 by hand: on delivery;
 - 20.2.4 by e-mail: on receipt of a delivery confirmation notification from the correct email address of the intended recipient confirming that the notice has been sent to that email address.
- 20.3 In proving the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication was addressed and despatched and despatch of the transmission was confirmed and/or acknowledged, as the case may be.
- 20.4 This clause does not apply to notices given in legal proceedings or arbitration.

21. Entire agreement

- 21.1 The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 21.2 Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
- 21.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

22. Assignment

- 22.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without NCL's prior written consent, such consent not to be unreasonably withheld or delayed.

- 22.2 NCL may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate, associate or sub-contractor. NCL acknowledges and agrees that any act or omission of such Affiliate, associate or sub-contractor in relation to NCL's rights or obligations under the Contract shall be deemed to be an act or omission of NCL itself.

23. Set off

- 23.1 NCL shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which NCL has with the Customer.
- 23.2 The Customer shall pay all sums that it owes to NCL under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

24. Equitable relief

The Customer recognises that any breach or threatened breach of the Contract may cause NCL irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to NCL, the Customer acknowledges and agrees that NCL is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

25. Compliance with law

The Customer shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

26. Third party rights

- 26.1 Except as expressly provided for in clause 26.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
- 26.2 Any Affiliate of NCL shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

27. General

- 27.1 Amendment – this Agreement may only be amended in writing signed by duly authorised representatives of each of the parties. Such amendment will only take effect when signed by duly authorised representatives of each of the parties.
- 27.2 Survival – provisions which either expressly provide or by their very nature are intended to survive termination of this Agreement shall do so.
- 27.3 Waiver – unless otherwise agreed in writing, no delay, act or omission by either party in exercising any right or remedy, or any single or partial exercise of any such right or remedy, will be deemed a waiver of that or any other right or remedy or prevent any future or further exercise of it.

- 27.4 Relationship – the parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

- 27.5 Time – unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.

- 27.6 Further assurance – the Customer shall at the request of NCL, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

- 27.7 Severance – if any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall be deemed amended to the minimum extent required to make it legal, valid and enforceable but if such amendment is not possible such provision shall instead, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and in either case such provision shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

- 27.8 Cumulative remedies – the rights and remedies provided in the Contract for NCL only are cumulative and not exclusive of any rights and remedies provided by law.

28. Governing law

The Contract and any dispute or claim arising out of, or in connection with, it, 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.

29. Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).