

# Veolia Group - General Conditions of Supply

## 1.0 Definitions

1.1 Words and expressions used in the Contract shall have the meanings ascribed to them as follows:-

- 1.1.1. **“Business Hours”** means 08.30am – 5.30pm on Monday to Friday (excluding Bank Holidays) or such hours as the parties may otherwise agree.
- 1.1.2. **“CDM Regulations”** means the Construction (Design and Management) Regulations 2015.
- 1.1.3. **“CIS”** means the Construction Industry Scheme as referred to in Finance Act 2004 and The Income Tax (Construction Industry Scheme) Regulations 2005
- 1.1.4. **“Commencement Date”** means the date for commencement of the Works as stated in the Contract or if not expressly stated, the date of the Order.
- 1.1.5. **“Completion Date”** means the date by which the Supplier shall have completed the Works as stated on the Order or elsewhere within the Contract.
- 1.1.6. **“Contract”** means the contract for the Supply of the Goods, provision of the Services and/or carrying out of the Works, or a combination of these, which shall comprise these General Conditions of Supply, Supplementary Conditions (if any), the Specification (if any), the Order and any attachments to the Order and shall take precedence in the order listed herein.
- 1.1.7. **“Contractor”** as defined in CIS means either the Customer or the Employer as defined herein.
- 1.1.8. **“Contracting Party”** means any of the Customers subsidiaries, its successors and assigns as specified in the Order. For the avoidance of doubt, nothing in this Contract shall be construed or deemed to constitute a partnership between any of the parties referred to in the preceding sentence nor as creating or purporting to create any joint and/or several liabilities between any or all of the parties referred to in the previous sentence.
- 1.1.9. **“Customer”** means the company in whose name the Order is issued.
- 1.1.10. **“Date of Taking-Over”** means the date of acceptance and taking-over of the Works by the Customer, as certified by the Customer in writing.
- 1.1.11. **“Defects Liability Period”** has the meaning given in clause 11.1
- 1.1.12. **“Delivery Date”** means the date for delivery of the Goods as stated in the Contract unless the Goods are to be delivered by instalments in which case delivery shall be in accordance with the Programme.
- 1.1.13. **“Domestic Reverse Charge”** means the legislation changes described in HMRC’s Domestic reverse charge procedure (VAT Notice 735) introduced on 1 March 2021
- 1.1.14. **“Employment Taxes”** means income tax, national insurance contributions and any other liability, deduction, levy including without limitation any apprenticeship levy, arising from or made in connection with the performance of the Services.
- 1.1.15. **“Goods”** means the provision of materials, plant, goods, equipment, consumables and other items (including any instalment of them or any part of them) as specified on the Order to be supplied by the Supplier in accordance with the terms and conditions of the Contract to which additional specific clauses in this document shall apply.
- 1.1.16. **“Intellectual Property Rights”** means any patents, trademarks, service marks, design rights (whether registerable or not), applications for any of the above rights, copyright, trade or business names or other similar rights whether registerable or not in any country including but not limited to the United Kingdom.
- 1.1.17. **“Intermediary”** means any entity through which a member of Personnel is contracted, other than the Supplier and any PSC.
- 1.1.18. **“IR35”** means the intermediaries legislation known as IR35 concerning off payroll working included in Chapters 8 and 10 of Part 2 of the ITEPA (as may be amended from time to time) and any other legislation or secondary

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legislation dealing with the tax and national insurance contributions treatment of workers whose services are provided via intermediaries

- 1.1.19. **"ITEPA"** means Income Tax (Earnings and Pensions) Act 2003.
  - 1.1.20. **"Order"** means a written purchase order issued by the Customer to the Supplier for the supply of the Goods, provision of the Services and/or carrying out of the Works.
  - 1.1.21. **"Personnel"** means employees, officers and individuals contracted to the Supplier or any third party as employee, contractor or otherwise and used by the Supplier whether or not identified in any document describing the Services and involved to any extent in the performance of the Services and/or the performance of this Contract.
  - 1.1.22. **"Price"** means the price as specified in the Order.
  - 1.1.23. **"Programme"** means any programme or times for the delivery of the Goods and/or provision of the Services and/or carrying out of the Works.
  - 1.1.24. **"PSC"** means a limited company or partnership which meets the conditions specified in sections 61O or 61P (as applicable) of ITEPA.
  - 1.1.25. **"Services"** means the emergency or planned maintenance, overhaul, repair or adjustments to the Goods and/or Works, new and/or existing services as specified on the Order to be provided by the Supplier in accordance with the terms and conditions of the Contract to which additional specific clauses in this document shall apply.
  - 1.1.26. **"Site"** means the location at which the Goods are to be delivered, the Services are to be provided and/or the Works are to be carried out as stated in the Order.
  - 1.1.27. **"Specification"** means any plans, drawings, data, samples or other descriptions or information relating to the Goods, Services and/or Works to which the Supplier must comply.
  - 1.1.28. **"Subcontractor"** as defined in CIS means the SUPPLIER or the contractor as defined herein.
  - 1.1.29. **"Supplier"** means the supplier of the Goods, the Services and/or the Works.
  - 1.1.30. **"Supplementary Conditions"** means the supplementary conditions comprising additions or amendments to the General Conditions of Supply (if any).
  - 1.1.31. **"VAT"** means Value Added Tax as governed mainly by the Value Added Tax Act 1994
  - 1.1.32. **"Works"** means the carrying out of installation, erection, modification, repair to both new and/or existing Goods and/or Works as specified on the Order to be carried out by the Supplier in accordance with the terms and conditions of the Contract to which additional specific clauses in this document shall apply.
- 1.2 Any reference in the Contract to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended from time to time.
  - 1.3 The headings in these General Conditions of Supply are for convenience only and shall not affect their interpretation.
- ## 2.0 Contract
- 2.1 Subject to clause 2.3, the Customer will only consider quotations and enter into contracts on the basis of the General Conditions of Supply that forms part of the Contract or in any documents expressly incorporated in to the Contract. Any other terms and conditions contained within the Supplier's quotation or in any invoice or delivery note (whether or not the same is signed by a representative of the Customer) or in any correspondence or "tear off" slip are expressly excluded and have no contractual force.
  - 2.2 This Contract shall apply to the exclusion of, and shall prevail over, any terms and conditions contained in or referred to in any documentation submitted by the Supplier or in any correspondence or elsewhere or implied by trade custom, practice or course of dealing or any terms and conditions that appear or are referred to on the Supplier's

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website.

- 2.3 Where another set of separate Customer-generated terms and conditions (relating to the same Goods and/or Services and/or Works) are signed by the Supplier and the Customer, then those terms and conditions shall supersede this Contract and shall apply retrospectively to the relevant Goods and/or Services and/or Works and this Contract shall have no further effect.
- 2.4 The waiver of any terms or conditions herein by the Customer shall only be effective if recorded in writing signed by the Customer and shall constitute a waiver for the purposes of that particular transaction only and all other terms and conditions shall remain in full force and effect.
- 2.5 Subject to clause 2.3 and notwithstanding the absence of any express reference to “goods, “services” and/or “works” on the face of the Order, the Contract shall apply to all agreements for (i) the supply of goods; (ii) the provision of services and (iii) the carrying out of any works or any combination of (i), (ii) and (iii).
- 2.6 Subject to the clause 2.3, the Contract shall supersede all previous communications or agreements between the Supplier and the Customer whether oral or written relating to the Goods, the Services and/or the Works.
- 2.7 The Order constitutes the Customer's acceptance of the Supplier's offer to supply the Goods, provide the Services and/or carry out the Works specified therein in accordance with the Contract.
- 2.7A The Customer may [at any time prior to despatch of the Order **OR** within seven (7) days of placing an Order] amend or cancel an Order by written notice to the Supplier. If the Customer amends or cancels an Order, its liability to the Supplier shall be limited to payment to the Supplier of all costs reasonably incurred by the Supplier in fulfilling the Order up until the date of receipt of the notice of amendment or cancellation, except that where the amendment or cancellation results from the Supplier's failure to comply with its obligations under this agreement the Customer shall have no liability to the Supplier in respect of it.
- 2.8 Subject to clause 2.3, no variation to the Contract shall be binding unless expressly agreed to be a variation in writing between authorised representatives of the Customer

and the Supplier.

- 2.9 No indulgence shown by either party shall prevent that party subsequently relying upon its rights and remedies under the Contract.
- 2.10 No waiver by the Customer of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 2.11 Clause not used
- 2.12 If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected by this decision or judgment and shall remain in full force and effect.
- 2.12a The Customer reserves the right to purchase any Goods, Services and/or Works from any supplier at its entire discretion.
- The following additional clauses shall apply where any Goods are to be supplied by the Supplier**
- 2.13 If the Goods are to be delivered in instalments, the Contract will be treated as a single contract and not severable.
- 2.14 In the absence of any specific date for delivery, the Supplier shall deliver the Goods with all due diligence and expedition and in accordance with any reasonable requirements as notified by the Customer.
- 2.15 Where Goods are imported, the delivery shall be made DDP (delivered duty paid) in accordance with Incoterms 2010 unless otherwise mutually agreed in writing.
- 2.16 Under the Contract the Supplier shall be an independent contractor, maintaining complete control over its personnel and operations. Nothing herein shall be deemed to constitute either party the partner, agent or legal representative of the other.
- 2.17 Except with the prior written consent of the Customer, the Supplier shall not make any press announcements or publicise the Contract or its contents in any way.

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## 3.0 Supplier's Responsibilities

- 3.1 All information systems, computers and associated software in the trading relationship between the Supplier and the Customer must have "date integrity" including provision for "year" and "leap year".
- 3.2 Clause not used
- 3.3 The Customer may require the Supplier to provide a form of performance bond or security in respect of the Goods, Services and/or Works which shall be in the form specified in the Order.
- 3.4A The Supplier shall at all times observe all health and safety rules and regulations and any other security requirements that apply at the Customer's premises.

### **The following additional clauses shall apply where any Goods are to be supplied by the Supplier**

- 3.4B The Goods shall be delivered to the Site on the Delivery Date and in accordance with the requirements stated in the Contract and/or in accordance with any Programme stated therein, in either case during Business Hours.
- 3.5 Where the date of delivery of the Goods is to be specified after the placing of the Order, the Supplier shall give the Customer reasonable notice of the specified date. The Supplier shall deliver the Goods on the specified date within Business Hours.
- 3.6 Where physically possible, a packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently together with information about storage requirements and/or lifting hazards.
- 3.7 The Customer shall be entitled to reject any Goods delivered which are not in accordance with the Contract. At its option the Customer may:
- (a) require the Supplier to repair the Goods or to supply replacement Goods which are in accordance with the Contract within 7 days; and
  - (b) whether or not the Customer has previously required the Supplier to repair the

Goods or to supply any replacement Goods, treat the Order as wholly repudiated by the Supplier and require the Supplier, at its own expense, to remove the Goods and require the repayment of any part of the Price which has been paid.

- 3.8 The Supplier shall provide the Customer with written notice of any instructions and/or other information ("Delivery Instructions") required (at least 7 working days prior to delivery) to enable the Customer to accept delivery of the Goods. The Customer shall be entitled to recover any loss suffered as a result of the Supplier failing to provide the Delivery Instructions on time.
- 3.9 The Customer shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Customer.
- 3.10 The Supplier warrants to the Customer that the Goods will:
- 3.10.1 Be of satisfactory quality (within the meaning of the Consumer Rights Act 2015) and fit for any purpose held out by the Supplier or made known to the Supplier (expressly or by implication) on or before the date of the Order;
  - 3.10.2 Be free from defects in design, materials and workmanship;
  - 3.10.3 Correspond with the Specification and any sample previously provided;
  - 3.10.4 Comply with all statutory requirements and regulations relating to the sale of the Goods; and
  - 3.10.5 not infringe the rights of any third party.
- 3.11 The quantity, quality and description of the Goods shall be as specified on the Order and/or the Specification.
- 3.12 The Supplier shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods.
- 3.13 Clause not used

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3.14 Clause not used

3.15 The Goods shall, where possible, be marked in accordance with the Customer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course of business. There must also be prominently displayed on the packaging of the Goods any storage requirements or lifting hazards.

**The following additional clauses shall apply where any Services are to be provided by the Supplier**

3.16 The Services shall be provided using reasonable skill and care, in compliance with industry best practice and in accordance with the requirements stated in the Contract.

3.17 The Services shall be provided during Business Hours, unless otherwise authorised in writing.

3.18 The Supplier shall ensure that any plant or equipment supplied as part of the Service corresponds with the Specification, is of reasonable quality and fit for any purpose held out by the Supplier or made known to the Supplier (expressly or by implication) on or before the date of the Order.

3.19 The Supplier shall comply with all relevant statutory requirements, health and safety requirements, security, and site regulations relating to the Services. Any other requirements will be advised by the Customer at the time of tender or order placement.

3.20 The Supplier shall ensure that where the provision of the Services needs to integrate with the activities of any other suppliers or sub-contractors, full co-operation is maintained as far as reasonably practical. In the event that the Customer should incur any additional expense as a result of failure by the Supplier to fully integrate the Services with the activities of any other suppliers or sub-contractors, the Supplier shall be liable for any additional substantiated and reasonable costs the Customer may thereby incur.

3.21 The Supplier shall give all notices legally required and pay all fees legally payable in connection with the Services.

**The following additional clauses shall apply where any Works are to be carried out by the Supplier**

3.22 The Supplier shall carry out and complete the Works using reasonable skill and care, in compliance with industry best practice and in accordance with the requirements stated in the Contract.

3.23 The Supplier shall be fully responsible for all aspects of the design of the Works save as specifically excluded within the Specification.

3.24 The Supplier shall promptly notify the Customer in writing in the event that the Supplier becomes aware of any ambiguity or error in the Specification or any respect in which the Works to be undertaken are unlikely to meet the Customer's requirements.

3.25 The Supplier shall be given access to the Site on the Commencement Date and shall thereupon proceed regularly and diligently with the Works in accordance with the Programme but in any event execute the Works by the Completion Date. The Supplier shall submit a progress report to the Customer on a monthly basis (or at such other frequency as the parties may reasonably agree).

3.26 The Supplier shall ensure that where the Works integrate with the activities of any other suppliers or sub-contractors, full co-operation is maintained as far as reasonably practical. In the event that the Customer should incur any additional expense as a result of failure by the Supplier to fully integrate the Works with the activities of any other suppliers or sub-contractors, the Supplier shall be liable for any additional substantiated and reasonable costs they may thereby incur.

3.27 The Supplier shall give all notices legally required and pay all fees legally payable in connection with the Works.

3.28 The Supplier shall promptly notify the Customer of:-

3.28.1 Any requirement for obtaining consents for the Works and for complying with all such consents; and

3.28.2 any claim, or circumstances which are likely to lead to a claim for the payment of any sum in excess of the Price. Failure to notify in accordance with this

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Clause 3.28 shall result in the Supplier being deemed to have waived any such claim.

- 3.29 Notwithstanding the Supplier's obligation to complete the Works on or before the Completion Date, the Supplier may be required to install, test and/or commission certain sections of the Works to comply with the Programme. The Price is deemed to include any costs in connection with complying with this requirement.
- 3.30 The Supplier warrants to the Customer that any materials, plant or equipment installed as part of the Works shall:-
- 3.30.1 be of satisfactory quality (within the meaning of the Consumer Rights Act 2015) and fit for any purpose held out by the Supplier or made known to the Supplier (expressly or by implication) on or before the time the Order is placed;
  - 3.30.2 be free from defects in design, materials and workmanship;
  - 3.30.3 corresponds with the Specification or any sample previously provided;
  - 3.30.4 comply with all statutory requirements and regulations relating to the Works; and
  - 3.30.5 not infringe the rights of third parties.
- 3.31 The Supplier shall comply with all relevant statutory requirements, (including, without limitation, the CDM Regulations, if applicable) and all health and safety requirements, and all security, and other site regulations concerning the Works.

**The following additional clauses shall apply in all cases**

- 3.32 The Supplier shall not unreasonably refuse any request by the Customer to inspect, test and audit the performance record, management system and competences, the premises of the Supplier or any third party before, during or after works carried out; or in the case of Goods being supplied, their manufacture, processing or storage prior to despatch, and the Supplier shall provide the Customer or any person to whom this right has been delegated by the Customer with all facilities reasonably required for

inspection, testing and auditing.

- 3.33 If, as a result of inspection, testing or auditing, the Customer is not satisfied that the Goods, Services and/or Works will comply in all respects with the Contract, and the Customer so informs the Supplier within seven (7) days of such inspection, testing or auditing, the Supplier shall (at his own cost) take such steps as are necessary to ensure compliance. When any inspections and/or testing demonstrates to the reasonable satisfaction of the Customer that the Goods, Services and/or Works comply in all respects with the Contract, the Supplier shall provide to the Customer evidence and/or certificates indicating the inspections and/or tests which have been performed in relation to the Goods, Services and/or Works and the results achieved.

**The following clauses shall apply where any Services and /or Works are to be carried out by the Supplier**

- 3.35 On the receipt or giving of a notice to terminate in accordance with Clause 8 or the date of appointment of a successor to the Supplier the Supplier shall without making a charge:
- 3.35.1 use all reasonable efforts to facilitate from the date of termination the transfer of the provision of the Services and/or Works to the Supplier's successor or at the Customer's option to the Customer itself;
  - 3.35.2 provide the Supplier's successor and the Customer with reasonable access to all relevant information, data and records and comply with all reasonable requests made by the successor and the Customer in connection with preparing for taking over the provision of the Services and/or Works; and
  - 3.35.3 provide to the Customer a copy of any software developed by the Supplier specifically for the purpose of providing the Services and/or Works to the Customer.
- 3.36 The Supplier shall be responsible at all times for maintaining control processes in line with industry best practice to detect and prevent, malware, viruses, spyware and hacking ("Malware") on its computer systems and networks. The Supplier shall update its antivirus, anti-malware and anti-spyware software regularly and ensure suitable firewall protection mechanisms are in place. The Supplier hereby releases the Customer from any and all liability for loss or damage suffered by the Supplier due to Malware and/or any failure by the Supplier to comply with its obligations under this

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clause.

## 4.0 Price

4.1 The Price shall be as stated on the Order and no increase in the Price may be made without the prior consent of the Customer in writing or by issue of a separate order, whether such increase may be on account of increased material, labour or transport costs, and fluctuation in rates of exchange or otherwise howsoever arising.

4.2 The Price shall be exclusive of any applicable value added tax (which shall be payable by the Customer subject to receipt of a VAT invoice).

**The following additional clauses shall apply where any Goods are to be supplied by the Supplier**

4.3 The Price shall be inclusive of all charges for packaging (and the return thereof), packing, shipping, carriage, insurance and delivery and off-loading of the Goods to the Site and any duties, imposts or levies other than value added tax.

## 5.0 Payment

**The following clauses shall apply where any Goods are to be supplied by the Supplier**

5.1 Unless otherwise stated in the Order, the Supplier shall be entitled to invoice the Customer on or at any time after delivery of the Goods, and each invoice shall quote the number of the Order where an Order number has been notified to the Supplier.

5.2 Subject to Clauses 5.8, 5.9 and 5.10 and unless otherwise stated on the Order, on acceptance of the Goods the Customer shall pay the Price at the end of the month following a 45 day period from the date of receipt by the Customer of a valid invoice.

**The following clauses shall apply where any Services are to be provided by the Supplier**

5.3 Unless otherwise stated in the Order, the Supplier shall be entitled to invoice the

Customer for the Service on a monthly basis in arrears.

5.4 Subject to Clauses 5.8, 5.9 and 5.10, and/or to any deduction for any element of the Service which has not been provided in accordance with the Contract, the Customer shall pay the sum as stated in the invoice at the end of the month following a 45 day period from the date of receipt by the Customer of a valid invoice.

**The following clauses apply where any Works are to be carried out by the Supplier**

5.5 Unless otherwise stated in the Order, the Supplier shall be entitled to apply for payment in writing to the Customer for that element or part of the Works carried out in the preceding month. The Customer shall consider any such application and shall then issue a payment certificate, even if the sum due is zero ("Payment Certificate") stating how much money is due to the Supplier under the Contract, within 7 days of receiving the application for payment. On receipt of the Payment Certificate the Supplier should submit its invoice for the amount stated in the Payment Certificate. The date of the Payment Certificate shall be the "due date" and the date of the "Final Date for payment" shall be as stated in Clause 5.6.

5.6 Subject to Clauses 5.8, 5.9 and 5.10 and/or to any deduction for any element of the Works which have not been carried out in accordance with the Contract, the Customer shall pay the Price at the end of the month following a 45 day period from the date receipt by the Customer of a valid invoice.

5.7 Unless otherwise agreed in writing, between the Customer and the Supplier, a retention of ten per cent (10%) shall be deducted at the Customer's sole discretion from each invoice submitted by the Supplier, where the Price of the Works exceeds twenty thousand pounds (£20,000). Such retention shall be released upon submission by the Supplier of a retention bond or bank guarantee in a form and substance acceptable to the Customer or otherwise shall be paid to the Supplier upon expiry of the Defects Liability Period.

**The following clauses shall apply in all cases**

5.8 Payment of any invoice shall be subject to the Supplier having provided all relevant worksheets and certificates, as applicable, to demonstrate its entitlement to payment in



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accordance with this Clause 5. Each invoice must be in an electronic format and make clear reference to a valid Customer Purchase Order number, delivery or site address and be detailed in a similar format to the Purchase Order to allow the matching of quantity and value. Any invoice in a paper form or without a valid Customer Purchase Order number shall be rejected and no payment will be made.

- 5.9 The Customer shall be entitled to set off against the Price any sums owed to the Customer by the Supplier, whether under the Contract or any other contract or arrangement between the parties.
- 5.10 The Customer shall not be obliged to pay and/or consider any invoice, which is received more than ninety (90) days after the Goods have been delivered to the Customer and/or the Work or Service has been completed unless the Supplier has given advance notice in writing (but no less than fourteen (14) days prior to the expiry of the ninety (90) days mentioned above) to the Customer of its intention to raise an invoice for Goods delivered, and/or Work or Service completed. This notice shall include full substantiation by the Supplier to support its invoice including, but not limited to, the Customer's agreement to the price (by way of example: any relevant purchase orders), date and proof of receipt of the Goods, and/or date of signed acceptance of the Work or Service carried out.
- 5.11 Excluding the payment of invoices subject to a bona fide dispute, if the Customer fails to make a payment due to the Supplier under this Contract by the due date, then the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgement. Interest under this clause will accrue at 2% a year above the Bank of England base rate. The parties agree that the remedies under this clause are sufficient for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998".

## The following clauses apply where any Works are to be carried out by the Supplier

- 5.12 The Customer may, up to 5 days before any Final Date for Payment issue a Pay Less Notice and shall pay the Supplier less than the sum set out in any Payment Certificate (the "Notified Sum").

## 6.0 Liability

- 6.1 The following provisions set out the parties' entire liability (including any liability for the acts or omissions of their respective employees, agents or sub-contractors) to each other in respect of:
- 6.1.1 any breach of their respective obligations under this Contract; and/or
- 6.1.2 any representation, statement or tortious act or omission, including negligence, or otherwise arising out of or in connection with this Contract.
- 6.2 Nothing in this Contract limits either party's liability for:
- 6.2.1 death or personal injury caused by negligence; and
- 6.2.2 wilful misconduct or fraud committed by a party.
- 6.3 The Supplier shall be liable for any and all acts or omissions of its employees, agents or sub-contractors arising out of or in connection with this Contract (whether arising from contract, breach of warranty, tort (including negligence), breach of statutory duty, non-fraudulent misrepresentation, under any indemnity or otherwise).
- 6.4 The Customer's total liability for any and all acts or omissions of its employees, agents or sub-contractors arising out of or in connection with this Contract (whether arising from contract, breach of warranty, tort (including negligence), breach of statutory duty, non-fraudulent misrepresentation, under any indemnity or otherwise) shall be limited to the lesser of the Contract Price or twenty five thousand pounds (£25,000).
- 6.5 Notwithstanding anything contained in the Contract, in no circumstances shall the Customer be liable to the Supplier, in contract or tort (including negligence or breach of statutory duty) howsoever arising, and whatever the cause thereof, for any (i) loss of production, loss of business, loss of contracts, loss of revenues or (ii) special, indirect incidental or consequential loss or damage of any nature whatsoever arising out of or in connection with the Contract.
- 6.6 Each party acknowledges that it considers the provisions of this Clause 6 to be reasonable, taking account of the other terms of this Contract and its ability to insure



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against the losses which might arise from a breach of this Contract.

6.7 The Supplier shall defend, hold harmless and indemnify the Customer (and its directors, officers, employees, agents, subsidiaries, affiliates and each of their successors) from and against any loss, claim, damages, costs and liabilities of any kind (including reasonable legal fees and expenses) to the extent that these arise out of or relate to the infringement of any patent, copyright, design right, trade mark, or other intellectual property rights ("Intellectual Property") relating to the Goods, Services and/or Works (as applicable).

6.8 The provisions of this Clause 6 shall survive the expiry or termination of this Contract.

## 7.0 Insurance and Title

7.1 The Supplier shall take out Employers Liability Insurance of not less than £5 million pounds (£5,000,000) in accordance with the Employers' Liability (Compulsory Insurance) Act 1969 plus a Public Liability Insurance Policy (in the case of provision of the Services or carrying out of the Works) and a Product Liability Insurance Policy (in the case of supply of Goods) with a reputable company in England, both with a limit of indemnity of not less than five million pounds (£5,000,000) on an each and every claim basis and such insurance shall be maintained in force throughout the duration of the Contract and for a continuous period of six years thereafter.

7.2 The Supplier shall provide evidence of the policies of insurance required to be maintained under the Contract and evidence of premiums paid by way of a broker's letter whenever reasonably requested to do so by the Customer. When trading with the Customer on a regular basis evidence of renewals shall be provided at least annually.

### **The following additional clause shall apply where any Works are to be carried out by the Supplier**

7.3 Where the Supplier is undertaking any design responsibility for the Works or any part of the Works it shall maintain Professional Indemnity Insurance with a reputable company in England with a limit of indemnity of not less than five million pounds (£5,000,000) on an each and every claim basis and such insurance shall be maintained in force throughout the duration of the Contract and for a continuous period of six years

thereafter.

### **The following additional clause shall apply where any Goods are to be supplied by the Supplier**

7.4 Title in the Goods shall pass to the Customer upon delivery, unless payment for the Goods (less any retention money) is made prior to delivery, in which case it shall pass to the Customer once payment has been made and the Goods shall be considered to have been appropriated to the Contract and shall be marked "Property of the Customer".

## 8.0 Breach and Termination

8.1 Without prejudice to any other remedies which may exist, either party may at its option suspend or terminate the Contract forthwith by written notice to the other if the other party is in material breach of any of its obligations hereunder and fails to remedy same within seven (7) days of receiving notice thereof in writing from the party thereby entitled to suspend or terminate the Contract.

8.2 The Customer shall be entitled to terminate the Contract forthwith without liability to the Supplier by giving notice to the Supplier at any time if:

8.2.1 the Supplier makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986 or any re-enactment or modification of it) or, being an individual or firm, becomes bankrupt or, being a company, becomes subject to an administration order or goes into liquidation, otherwise than for the purpose of solvent amalgamation or reconstruction;

8.2.2 an encumbrancer takes possession of, or a receiver is appointed in respect of, any of the property or assets of the Supplier;

8.2.3 the Supplier ceases, or threatens to cease, to carry on business; or

8.2.4 The Customer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly

8.3 Notwithstanding clauses 8.1 and 8.2, the Customer shall be entitled to terminate the

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Contract subject to giving fourteen (14) days' prior written notice to the Supplier. In such circumstances, the Customer shall reimburse the Supplier such proportion of the Price as it is fair and reasonable to pay for the actual quantity of the Goods supplied, the Services provided and/or the Works completed as at the date of termination.

**The following additional clauses shall apply where any Goods are to be supplied by the Supplier**

- 8.4 If the Goods are not delivered on the Delivery Date then, without prejudice to any other remedy, the Customer shall be entitled to deduct from the Price or (if the Customer has paid the Price) to claim from the Supplier by way of liquidated damages for delay, one per cent (1%) of the Price for every week's delay, up to a maximum of ten per cent (10%) of the Price or such other liquidated damages as are specified in the Contract. In the event that delivery of the Goods is delayed for a period of four (4) weeks or more from the Delivery Date, the Customer may terminate the Contract in accordance with Clause 8.1.
- 8.5 Without prejudice to any other remedies which may exist, if any Goods are not supplied or do not comply with the terms and conditions of the Contract, then the Customer shall be entitled:
  - 8.5.1 To require the Supplier to take action to repair or replace, as appropriate, within seven (7) days of receiving notice to such effect from the Customer in writing (or such longer period as may be specified in such notice) and to agree with the Customer a new date for completing the repair or replacement (as appropriate) as soon as possible; or
  - 8.5.2 at the Customer's sole discretion, if it is not practicable for the Supplier to comply with Clause 8.5.1 or if the Supplier has failed so to do, to treat the Contract as repudiated by the Supplier's breach immediately following notice from the Customer and require the repayment of any part of the Price which has been paid, together with any sums payable under Clause 5.
- 8.6 On termination other than pursuant to Clause 8.4, title in all Goods paid for by the Customer, whether on or off the Site, shall vest in the Customer.

**The following additional clauses shall apply where any Works are to be carried out by the Supplier**

- 8.7 Subject to Clause 8.10, if the Works are not executed by the Completion Date, then, without prejudice to any other remedy, the Customer shall be entitled to deduct from the Price or (if the Customer has paid the Price) to claim from the Supplier by way of liquidated damages for delay one per cent (1%) of the Price for every one week's delay, up to a maximum of ten per cent (10%) of the Price or such other liquidated damages as are specified in the Contract.
- 8.8 Subject to Clause 8.10, in the event that the Works are not executed within ten (10) weeks of the Completion Date, the Customer may terminate the Contract pursuant to Clause 8.1.
- 8.9 On termination, the Customer may itself take over the Works or make such arrangements as it considers necessary to have the Works completed otherwise than by the Supplier, who shall thereafter be excluded from further performance of the Works. In such event, the Customer shall cease to be obliged to make any further payment under the Contract until the Works are completed. Upon completion of the Works, the Supplier shall pay to the Customer an amount calculated as follows:-  
  
((b) + (c)) - (a), where:-
  - (a) is the Price;
  - (b) is the certified cost to the Customer of having the remainder of the Works completed plus any loss, damage or other expenses suffered or incurred by the Customer; and
  - (c) is an amount equal to any amount already paid to the Supplier plus any sum due under Clause 5.
- 8.10 In the event that the Works are not completed by the Completion Date and such delay is as a result of default by the Customer, then the parties shall in good faith agree a new completion date allowing the Supplier a reasonable time, taking into account all circumstances, to complete the Works.

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## 9.0 Governing Law

- 9.1 The Contract shall be construed and governed in all respects in accordance with the laws of England and Wales and subject to Clauses 9.2 and 9.3, any disputes or differences arising out of or in connection with the Contract shall be subject to the exclusive jurisdiction of the English courts.
- 9.2 Should any dispute or difference arise out of or in connection with the Contract, both parties shall use all reasonable endeavours so that any such disputes are initially discussed by respective senior authorised representatives of the Supplier and the Customer.
- 9.3 If any dispute or difference arising out of or in connection with the Contract has not been resolved to the satisfaction of both the Supplier and the Customer within two (2) weeks of the commencement of discussions under clause 9.2, then a director of each party shall meet and make a bona fide attempt to reach settlement.
- 9.4 Although the parties are to use all reasonable endeavours to resolve disputes in accordance with Clause 9.2 and 9.3, the commencement of any mediation and/or dispute resolution process shall not prevent the parties commencing or continuing court proceedings in relation to the dispute.

## 10.0 Force Majeure

- 10.1 Neither the Supplier nor the Customer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods, the Services and/or the Works, if the delay or failure arose by reason of circumstances beyond either party's reasonable control and which could not have been avoided by the exercise of reasonable care (excluding strikes lock-outs and labour disputes).
- 10.2 In the event that either party is unable, delayed or prevented in performing its obligations under the Contract for a period of more than thirty (30) days by reason of circumstances beyond its reasonable control and which it has not brought about at its insistence, either party shall be entitled to terminate the Contract by giving fourteen (14) days' notice of termination to the other party. In such circumstances, the Customer shall reimburse the Supplier such proportion of the Price as it is fair and reasonable to

pay for the actual quantity of the Goods supplied, the Services provided and/or the Works completed as at the date of termination.

## 11.0 Defects

**The following additional clauses shall apply where any Goods are to be supplied by the Supplier and/or where any Works are to be carried out by the Supplier**

### 11.1 Any defects or deficiencies which:-

- (a) appear (i) in the case of Goods, within eighteen (18) months of the later of the Delivery Date and the actual delivery date; or (ii) in the case of Works, within the later of twelve (12) months from the Date of Taking-Over and the Completion Date; or (iii) such other time period as may be agreed between the parties (the "Defects Liability Period"); or-
- (b) arise (i) in the case of Goods, from a breach of Clause 3.10; or (ii) in the case of Works, from a breach of clause 3.30;

shall be made good by the Supplier entirely at its own cost promptly following notification in writing of any such defects or deficiencies and at a time convenient to the Customer (acting reasonably) provided that such notification is given to the Supplier in the case of Paragraph (a), during the Defects Liability Period or within fourteen (14) days of its expiry and in the case of Paragraph (b), within the period required under contract.

### 11.2 If the Supplier shall fail to make good defects or deficiencies promptly as aforesaid, the Customer may engage others to carry out the necessary work and the Supplier hereby agrees to indemnify the Customer in full against the cost thereof.

### 11.3 In the event that the Customer exercises its right to make good any defects or deficiencies in accordance with Clause 11.2 above, such work shall be deemed to have been carried out by the Supplier and the liability of the Supplier in relation to the Goods and/or Works shall be unaffected thereby.

## 12.0 Notices

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Any notice required or permitted to be given by either party to the other under the Contract shall be in writing addressed to that other party at its registered office or principal place of business or other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Notices given by facsimile or personal delivery shall be deemed to be received on the day of service (if within business hours) and on the next working day (if outside working hours). Notices served by first class post shall be deemed to be received on the second day after posting. The parties agree that e-mail is an acceptable medium for transmission of notices and that any notice sent by e-mail shall constitute a valid notice in accordance with this Clause 12.0.

## 13.0 Assignment and Subcontracting

13.1 The Supplier shall not assign or transfer or purport to assign or transfer to any other person any of its rights under the Contract, without the Customer's prior written approval.

13.2 The Supplier shall not sublet the whole or any part of its obligations under the Contract without the prior written consent of the Customer and then only to suppliers approved by the Customer. Insofar as the Customer does give its consent the Supplier shall remain fully responsible for all acts and omissions of such suppliers and shall ensure that the insurance cover required to be maintained under the Contract provides the same cover for such suppliers as it does for the Supplier or alternatively, that equivalent insurance cover is maintained in respect of such suppliers.

## 14.0 Intellectual Property Rights

14.1 Subject to Clause 6.7, any drawings, documents and information, including, but not limited to, all reports, statements, summaries, certificates, calculations and any other information, including any such information which is generated by or stored on computer, which have been or shall be prepared or provided by or on behalf of the Supplier relating to this Contract ("the Documents") shall, as the case may be, vest in or remain vested in the Supplier but notwithstanding the completion or abandonment of the works at the Site or termination or alleged termination of this Contract, the Supplier hereby grants an irrevocable, royalty-free, non-exclusive, transferable licence to the Customer to use, reproduce and/or modify the Documents for any purpose whatsoever including, without limitation, the execution, completion, maintenance and reinstatement

of the Works, Goods and/or Services and to the extent that the Supplier procures Documents from others, it shall, unless previously agreed otherwise, ensure that a similar licence to use and reproduce such Documents is also granted to the Customer.

14.2 The Supplier hereby grants the Customer an irrevocable, royalty-free, non-exclusive, transferable licence to the Customer to use, reproduce, decompile and/or modify any software, code, source code, BMS, DCS, SCADA or other operating or control system used by, in connection with or otherwise to control, monitor or otherwise operate any Works, Goods or Services supplied by the Supplier under this Contract.

14.3 The Supplier warrants that it has not infringed any third party's Intellectual Property rights.

## 15.0 Confidential Information

15.1 Neither party shall, without the prior written consent of the other, disclose to any person or otherwise make use of any information which has come into its possession or which may in the course of the Contract come into its possession relating to the other, the Contract or otherwise, nor shall it disclose to any person whatsoever anything contained in the Contract. This restriction shall continue to apply except where:-

15.1.1 such information comes properly into the public domain through no fault of such party;

15.1.2 such party is required by law to disclose the information in question;

15.1.3 such party discloses such information to its bankers or financial, economic, legal or other advisers; or

15.1.4 the Customer discloses information necessary for the work for which they are engaged in connection with this Contract.

15.2 The obligations contained in this Clause 15 shall continue notwithstanding any termination of the Contract.

## 16.0 Third Party Rights

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No term of the Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person or body who is not a party to it.

## 17.0 Discrimination

The Supplier shall not unlawfully discriminate within the meaning and scope of any law or regulation relating to discrimination (whether in race, gender, religion, disability, age, sexual orientation or otherwise) in employment. The Supplier shall take all reasonable steps to secure the observance of this provision by all servants, employees or agents of the Supplier and all suppliers and sub-contractors employed in the execution of the Contract.

## 18.0 Employment of Domestic and Foreign Workers

Where the Supplier is undertaking any work and/or services on behalf of the Customer, the Supplier undertakes not to employ or use any labour in contravention of the requirements of The Modern Slavery Act 2015 and Section 8 of the Asylum and Immigration Act 1996 and indemnifies the Customer against any claim, dispute, consequence or responsibility in the use of such labour. The Supplier shall promptly report to the Customer in the event of uncovering any instances of modern slavery in its direct and / or indirect employment, or other areas of its supply chain.

## 19.0 Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE")

19.1 Where TUPE applies, the Supplier shall co-operate in the transfer of the provision of the Services (or such of the Services as the Customer shall specify) to any new contractor or to the Customer so as to avoid or minimise as far as possible any disruption to the continuity of the Services and the Supplier shall comply with such arrangements as the Customer may notify to the Supplier for this purpose. In co-operating, the Customer expects the Supplier to play an active part in the consultation process which should be a minimum period of four (4) weeks from the first notification to all transferring employees.

19.2 Where TUPE applies, the Supplier shall promptly upon request, from time to time, (whether before or after the expiry or termination of any Contract), supply in writing to the Customer and any other nominated contractor who may be tendering for the

Services, such TUPE information relating to the employees employed by the Supplier in the provision of the Services as may be requested, together with copies of all the contracts of such employment. The Supplier warrants to the Customer for all purposes (including without limitation the Data Protection Act 2018) that the Supplier has all necessary consents and registrations as may be required under the Data Protection Act 2018 for these purposes.

19.3 Where TUPE applies, the Supplier shall not during the last 6 months of the Contract Period or following the giving of any termination notice, change any of the terms of the employment of its employees or engage any new employees or redeploy, replace or dismiss any employee involved in the provision of the Services without the written consent of the Customer, save in respect of any termination as a result of disciplinary action or the resignation of any employee.

19.4 Where TUPE applies, the Supplier shall indemnify and keep the Customer indemnified in respect of any and all liability whatsoever which may be incurred by the Customer in respect of any transferred employee as a result of or in consequence of any act or omission on the part of the Supplier prior to the date of such transfer, including but not limited to payment of all emoluments, tax and national insurance contributions, any employee claim and/or any inaccuracy of information provided by the Supplier.

## 20.0 Sustainable Commitment and Corporate Responsibility

The Supplier shall comply with the Customer's sustainability principles as set out in its Supplier Charter.

The Supplier shall upon the Customer's request send a report to the Customer which states the actions it has conducted in favour of Sustainable Development, in particular in respect of:

- reductions in energy consumption (water, gas, electricity)
- reductions in waste into the water, air, and the soil
- reductions in waste produced during different stages of production

The Supplier commits to comply with all existing laws and regulations including, but without limitation, those relating to the employment of clandestine workers, children and forced labour, as well as those relating to health and safety, environmental protection

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and unlawful discrimination.

The Supplier commits to the provision of any documents (relating to the above) reasonably required by the Customer.

## 21.0 Anti-Bribery & Corruption

21.1 In carrying out the terms of this Contract, the Supplier has and shall:

- a) strictly comply with applicable laws prohibiting the bribery of public officials and private persons, influence peddling, money laundering that may in particular entail a public contract debarment, including but not limited to:
  - The 2010 UK Bribery Act,
  - The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of December 17, 1997,
- b) undertake to put in place and implement all necessary and reasonable policies and measures to prevent corruption;
- c) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- d) comply with the Customer's ethics, anti-bribery and anti-corruption policies, in each case as the Customer may update them from time to time;
- e) have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce, where appropriate; and
- f) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Contract and /or any other breach of this clause.

21.2 The Supplier declares that to its knowledge, its legal representatives, directors, employees, agents, and anyone performing services for or on behalf of the Customer pursuant to this Contract do not and will not directly or indirectly offer, give, agree to give, authorize, solicit, or accept the giving of money or anything else of value or grant any advantage or gift to any person, company or undertaking whatsoever including any government official or employee, political party official, candidate for political office, person holding a legislative, administrative or judicial position of any kind for or on

behalf of any country, public agency or state owned company, official of a public international organisation, for the purpose of corruptly influencing such person in their official capacity, or for the purpose of rewarding or inducing the improper performance of a relevant function or activity by any person in order to obtain or retain any business for the Customer or to gain any advantage in the conduct of business for the Customer.

21.3 The Supplier further undertakes to ensure that neither the Supplier nor any of its legal representatives, directors, employees, agents, sub-contractors and anyone performing services for or on behalf of the Customer under this Contract has been, or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programs and/or bidding following invitations to bid advertised by the World Bank or any other international development bank.

21.4 the Supplier has retained and undertakes to retain for an appropriate period following termination of this Contract, accurate supporting documentation of its compliance with the terms of this clause.

21.5 If the Customer notifies the Supplier that it has reasonable grounds to believe that the Supplier has breached any term of this clause:

- (a) the Customer is entitled to suspend performance of this Contract without notice for as long as the Customer considers necessary to investigate the relevant conduct without incurring any liability or obligation to the Supplier for such suspension;
- (b) in such circumstances the Supplier is obliged to take all reasonable steps to prevent the loss or destruction of any documentary evidence in relation to the relevant conduct, of which it has been notified;
- (c) on notification, the Customer may immediately terminate this Contract without notice and without incurring any liability ;
- (d) the Supplier undertakes to indemnify the Customer, to the maximum extent permitted by law, for any loss, damages, or expenses incurred or suffered by the Customer arising out of such breach

21.6 The Supplier shall ensure that any person associated with the Supplier who has performed and/or is performing Services and/or has carried out and/or is carrying out Works and/or who has provided and/or is providing Goods in connection with this

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Contract does so only on the basis of a written contract which imposes on and secures from any such person terms equivalent to those imposed on the Supplier in this clause 21 ("Relevant Terms"). The Supplier is responsible and shall be responsible for the observance and performance by any such person of the Relevant Terms, and is and shall be directly liable to the Customer for any breach by any such person of any of the Relevant Terms.

21.7 A breach of this clause by the Supplier shall be deemed to be a material breach of this Contract.

21.8 For the purpose of this clause the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 21 a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.

## 21A.0 Facilitation of Tax Evasion

21A.1 In carrying out the terms of this Contract, the Supplier has and shall:

- (a) strictly comply with applicable laws regarding tax evasion, including but not limited to the Corporate Criminal Offence of the Facilitation of Tax Evasion ('CCO') at Chapter 3 of the Criminal Finances Act 2017;
- (b) comply with the Customer's CCO policy as the Customer may update them from time to time;
- (c) have and shall maintain in place throughout the term of this Contract its own policies and procedures in relation to 'CCO'

21A.2 The Supplier has retained and undertakes to retain for an appropriate period following termination of this Contract, accurate supporting documentation of its compliance with the terms of this clause.

21A.3 If the Customer notifies the Supplier that it has reasonable grounds to believe that the Supplier has breached any term of this clause:

- (a) the Customer is entitled to suspend performance of this Contract without notice

for as long as the Customer considers necessary to investigate the relevant conduct without incurring any liability or obligation to the Supplier for such suspension;

- (b) in such circumstances the Supplier is obliged to take all reasonable steps to prevent the loss or destruction of any documentary evidence in relation to the relevant conduct, of which it has been notified;
- (c) on notification, the Customer may immediately terminate this Contract without notice and without incurring any liability ;
- (d) the Supplier undertakes to indemnify the Customer, to the maximum extent permitted by law, for any loss, damages, or expenses incurred or suffered by the Customer arising out of such breach

21A.4 A breach of this clause by the Supplier shall be deemed to be a material breach of this Contract.

## 22.0 Data Protection

22.1 For the purpose of this clause 22.0, the following terms shall have the meanings hereby assigned to them unless the context otherwise requires:

**Applicable Law:** has the meaning given to it in clause 22.4 (a).

**Data Protection Laws:** means (i) the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ("EU GDPR"); and (ii) the General Data Protection Regulation as it forms part of UK domestic law by virtue of the UK Data Protection Act 2018 and Section 3 of the European Union (Withdrawal) Act 2018 as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 (as amended) ("UK GDPR"). Unless otherwise stated, "GDPR" means both the EU GDPR and UK GDPR.

**Data Controller, Data Processor, Data Subject and Personal Data:** have the meanings given to them in the Data Protection Laws.

22.2 Both parties will comply with all applicable requirements of the Data Protection Laws. This clause 22.0 is in addition to, and does not relieve, remove or replace, a party's



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obligations under the Data Protection Laws.

22.3 In performing its obligations under the Contract, the Supplier may process Personal Data on behalf of the Customer. The parties acknowledge that for the purpose of the Data Protection Laws, the Customer is the Data Controller and the Supplier is the Data Processor.

22.4 Without prejudice to the generality of clause 22.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:

- (a) process that Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws of the UK or any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (“**Applicable Law**”). Where the Supplier is relying on Applicable Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Law unless the Applicable Law prohibits the Supplier from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer upon request, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data. The technical and organisational measures must be appropriate to: (i) the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage; and (ii) the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (which 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);
- (c) ensure that all personnel who have access to and/or process Personal Data only process the Personal Data in accordance with clause 22.4(a), have undergone adequate training in the use, care, protection and handling of Personal Data, and are obliged to keep the Personal Data confidential;

(d) not transfer any Personal Data outside of the European Economic Area or outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

- (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer in responding to any request from a Data Subject and in ensuring compliance with the Customer’s obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer promptly, and in any event within 24 hours, on becoming aware of a Personal Data breach, and provide the Customer with further information on the breach as and when further details become available;
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 22.0 and allow for audits by the Customer or the Customer’s designated auditor.

22.5 The Supplier shall notify the Customer immediately if it considers that any of the Customer’s instructions infringe the Data Protection Laws.

22.6 Before allowing any third-party processor to process any Personal Data under the Contract, the Supplier must:

- (a) notify the Customer in writing of the intended third-party processor and processing;
- (b) obtain the written consent of the Customer to the appointment of the third-party processor;

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- (c) enter into a written agreement with the third-party processor incorporating terms which are substantially similar to those set out in this clause 22.0; and
- (d) provide the Customer with such information regarding the third-party processor as the Customer may reasonably require.

As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it.

22.7 The Supplier shall indemnify the Customer against all losses, claims, damages, liabilities, costs and expenses (including legal costs) incurred by the Customer in respect of any breach of this clause 22.0 by the Supplier.

## 23.0 Entire Agreement

23.1 Subject always to clause 2.3 the Contract constitutes the whole agreement between the parties relating to the transactions contemplated by this Contract and supersedes all previous agreements between the parties relating to these transactions.

23.2 No claim, action, suit or action of any kind may be commenced against the Customer more than one (1) year from the date the Supplier knew or ought reasonably to have known that a claim, action, suit or cause of action against the Customer had accrued or occurred

## 24.0 IR35

24.1 The parties agree that the Supplier is providing the Services to the Customer on a fully contracted out basis.

24.2 The Supplier warrants that no part of the Services will be supplied in such a way that any Personnel will be personally performing, or under an obligation personally to perform the Services for the Customer for the purposes of Chapter 10, Part 2 of ITEPA.

24.3 The Supplier for the purposes of Chapter 10, Part 2 of ITEPA shall issue a status determination statement to any member of Personnel to whom the provisions of clause 61M ITEPA apply and shall make such deductions of Employment Taxes and account to HM Revenue & Customs for such amounts as is required by law. In the event that a member of Personnel supplies the Services via an Intermediary, the

Supplier shall require such entity to comply with the obligations to make such deductions or contributions as is required by law.

24.4 If the Customer is liable to withhold and account for any Employment Taxes due to any act, omission or default of the Supplier, the Supplier will take or procure the taking of all necessary action to ensure that the Customer ceases to be responsible for such liabilities as soon as practicable.

24.5 In addition to and without limiting its other rights or remedies, if the Customer is or becomes responsible for withholding and accounting for any Employment Taxes in connection with the provision of the Services, the Customer shall have the right to recover from the Supplier to the maximum extent permitted by law by way of deduction from the amount of any fees or charges payable by the Customer to the Supplier (and whether by set-off or otherwise) any amounts (including penalties and interest) which the Customer is required to pay under IR35.

24.6 The Supplier shall indemnify the Customer and keep the Customer indemnified in full to the extent permitted by law against the amount of all losses, fines, penalties, awards, liabilities, costs, damages and expenses (including reasonable legal expenses on an indemnity basis) which the Customer may suffer or incur and which arise in connection with any breach of any warranty or other obligation contained in this clause 24 of this Contract and any and all liability to account for deductions or payments of Employment Taxes, associated interest and/or penalties arising, or payment of employer National Insurance contributions (together, in each case, with reasonable legal expenses incurred in relation to such liability), in respect of any Services performed by or payments made to or in respect of Personnel. The Customer shall be deemed to have a liability to pay or account in respect of a sum if it has received a written demand from HM Revenue & Customs in respect of such sum.

24.7 When the Services and/or Works provided by the Supplier is in scope of CIS, the Contractor agrees to verify the Subcontractor's CIS status and then to withhold tax at the relevant rate as determined by their verification status and account to HM Revenue & Customs for such amounts as defined in Finance Act 2004.

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## 25.0 Domestic Reverse Charge

- 25.1 Where the Domestic Reverse Charge applies, the Subcontractor agrees to not to charge VAT to the Contractor.
- 25.2 It is the Subcontractor's responsibility to ask the Contractor whether they are an end user before the Work is carried out.
- 25.3 If the Contractor will be an end user for the purposes of the Domestic Reverse Charge, they will inform the Subcontractor.
- 25.4 Where the Subcontractor determines that the Contractor is an end user and that the Domestic Reverse Charge applies, the Subcontractor must make a note on the invoice, per HMRC guidance (<https://www.gov.uk/guidance/vat-reverse-charge-technical-guide#invoices>), to make it clear that the Domestic Reverse Charge applies and that the Contractor is required to account for the VAT.

## Supplier's Acknowledgement and Acceptance of the General Conditions of Supply

Signature \_\_\_\_\_

Print name \_\_\_\_\_

Position \_\_\_\_\_

Date signed \_\_\_\_\_

Trading name \_\_\_\_\_