

DATED

FRAMEWORK GOODS AND SERVICES AGREEMENT



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This Agreement is dated

BACKGROUND

- (A) The Supplier is in the business of providing the Goods and/or Services, as more particularly defined below.
- (B) The Customer wishes to obtain and the Supplier wishes to provide the Goods and/or Services on the terms set out in this Agreement.

AGREED TERMS

1. Interpretation

1.1 The following definitions and rules of interpretation apply in this Agreement:

Affiliate: any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

Agreement: this framework Agreement inclusive of and incorporating any Statement(s) of Work.

Applicable Laws: all applicable laws, statutes, regulations and codes from time to time in force.

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

Business Hours: the period from 09.00 am to 17:30 on any Business Day.

CDPA 1988: the Copyright Designs and Patents Act 1988.

Change Order: has the meaning given in clause 8.1.

Commencement Date: the date set out at the head of this Agreement.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression 'Change of Control' shall be construed accordingly.

Customer: the organisation identified in the Statement of Work, who purchases the Goods and/or Services from the Supplier, and whose authorised signatory has signed this Agreement.

Customer IPR: any Intellectual Property Rights belonging to the Customer, which are provided to the Supplier to enable the Supplier to deliver the Goods and/or perform the Services.

Data Controller: has the meaning set out in section 1(1) of the Data Protection Act 1998.

Date Processor: has the meaning set out in section 1(1) of the Data Protection Act 1998.

Data Subject: an individual who is the subject of Personal Data.

Goods: the goods, or any instalment of the goods, or any part of them, supplied by the Supplier in accordance with this Agreement and as more particularly set out within the Statement(s) of Work. For the avoidance of any doubt, the Goods do not include the Supplier IPR.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Location: the location to which the Goods are going to be delivered and/or the Services are to be performed by the Supplier. '**Locations**' shall be construed accordingly.

Milestone: a date by which a part or all of the Goods shall be delivered and/or the Services are to be performed or completed, as set out in a Statement of Work.

Party: either the Supplier or the Customer as the context may require. '**Parties**' shall be construed accordingly.

Personal Data: has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, in respect of which the Customer is the Data Controller and in relation to which the Supplier is providing Goods and/or Services under this Agreement.

Processing and Process: have the meaning set out in section 1(1) of the Data Protection Act 1998.

Protected Rights: collectively, the Supplier IPR and the Customer IPR.

Services: the services to be provided by the Supplier in accordance with this Agreement and as more particularly set out within the Statement(s) of Work.

Supplier: 4i Water Services Limited, a company incorporated and registered in England and Wales with company number 04391787 whose registered office is at Unit 18 Woolpit Business Park, Woolpit, Bury St. Edmunds, Suffolk, IP30 9UP.

SoW Charges: the sums payable for the Goods and/or Services as set out in a Statement of Work.

Statement of Work: a detailed plan, agreed in accordance with clause 3, describing and specifying the Goods and/or Services to be provided by the Supplier, the timetable for their provision and any related commercial matters, as set out in Schedule 1. '**Statements of Work**' shall be construed accordingly.

Supplier IPR: the Intellectual Property Rights belonging to the Supplier relating to the Goods, which includes but shall not be limited to background programming data, programming scripts,

software, design, any moral rights belonging to and being retained by the Supplier as set out under Chapter IV of the CDPA 1988, and other such analogous rights relating to the control and functionality of the Goods.

Term: the term of this Agreement being the period of [insert] years from the Commencement Date.

Tests: the tests commissioned by the Supplier using an accredited UKAS laboratory, as verified by the Customer, the results of which shall be used, where required, to achieve SoW Sign-off and set the parameters of the Continuing Obligations (both terms as more particularly defined in clauses 3.5 and 18.2 respectively).

Territory: the United Kingdom.

VAT: value added tax chargeable under the Value Added Tax Act 1994.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- 1.8 This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 For the avoidance of any doubt, a specific reference to the Data Protection Act 1998 shall, with effect from the 25th May 2018, be as amended by Regulation (EU) 2016/679 on the protection of

natural persons with regard to the processing of personal data and on the free movement of such data, more commonly known as the General Data Protection Regulation.

- 1.12 A reference to **writing** or **written** includes email but excludes fax.
- 1.13 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 A reference to **this Agreement** or to any other agreement or document referred to in this Agreement is a reference of this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.
- 1.15 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.16 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Commencement and Duration

- 2.1 The Customer appoints the Supplier as its exclusive provider of the Goods and/or Services from the Commencement Date.
- 2.2 This Agreement shall commence on the Commencement Date and shall continue for the longer of the Term or the completion of a Statement of Work, unless terminated earlier in accordance with clause 16.
- 2.3 The parties shall not enter into any further Statements of Work after the date on which notice to terminate is served under clause 2.1.
- 2.4 The Customer may procure the Goods and/or Services by agreeing a Statement of Work with the Supplier pursuant to clause 3.
- 2.5 The Supplier shall provide the Goods and/or Services from the date specified in the relevant Statement of Work.

3. Statements of Work

- 3.1 Each Statement of Work shall be agreed in the following manner:
 - (a) the Customer shall ask the Supplier to provide the Goods and/or Services and provide the Supplier with as much information as the Supplier reasonably requests in order for

the Supplier to prepare a draft Statement of Work for the Goods and/or Services requested;

- (b) following receipt of the information requested from the Customer the Supplier shall, as soon as reasonably practicable either:
 - (i) inform the Customer that it declines to provide the requested Goods and/or Services; or
 - (ii) provide the Customer with a draft Statement of Work.
- (c) if the Supplier provides the Customer with a draft Statement of Work pursuant to clause 3.1(b)(ii), the Supplier and the Customer shall discuss and agree the same; and
- (d) both parties shall sign the draft Statement of Work when it is agreed.

3.2 The Supplier may charge for the reasonable preparation of substantial and/or complex Statements of Work on a time and materials basis in accordance with the Supplier's standard daily fee rates in force from time to time and which are available to the Customer on request. Any such charge for the preparation of a Statement of Work shall be agreed with the Customer beforehand.

3.3 Once a Statement of Work has been agreed and signed in accordance with clause 3.1(d), no amendment shall be made to it except in accordance with clause 8 or clause 21.

3.4 Each Statement of Work once signed by both parties shall be validly incorporated into and form part of this Agreement and shall not form a separate contract to it. For the avoidance of any doubt, there shall be no limit to the number of individual Statements of Work that may be agreed between the parties and attached at Schedule 1.

3.5 On the completion of each Statement of Work, the Customer shall acknowledge and record in writing to the Supplier that the Goods have been delivered and the Services performed at the Location (the '**SoW Sign-off**') at which point the Location and responsibility for maintaining any relevant service standards and, where relevant, the standard as evidenced by the Tests, shall pass to the Customer. Without prejudice to any other obligations of the Customer arising under this Agreement, the provisions of clause 18.3 shall then apply.

4. Supplier's Responsibilities

4.1 The Supplier shall use reasonable endeavours to provide the Goods and/or Services to the Customer, in accordance with a Statement of Work in all material respects.

4.2 The Supplier shall use reasonable endeavours to meet any Milestones specified in a Statement of Work but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this Agreement.

- 4.3 The Supplier shall appoint a manager in respect of the Goods and/or Services to be delivered and performed under each Statement of Work, with such person being as identified in the Statement of Work. That person shall have authority to contractually bind the Supplier on all matters relating to the relevant Goods and/or Services (including by signing Change Orders). The Supplier shall use all reasonable endeavours to ensure that the same person acts as the Supplier's manager throughout the term of the relevant Statement of Work, but may replace that person from time to time where reasonably necessary in the interests of the Supplier's business.
- 4.4 To deliver the Goods and/or perform the Services in willing co-operation with the Customer and, where expressly agreed between the parties prior to the delivery of any Goods and/or performance of any Services; with any Affiliate, sub-contractor or end client of the Customer whose details are set out within the agreed and relevant Statement of Work.

5. Customer's Obligations

- 5.1 In addition and without prejudice to any other obligations arising under this Agreement, the Customer shall:
- (a) co-operate with the Supplier in all matters relating to the Goods and/or Services;
 - (b) appoint a manager in respect of the Goods to be delivered and/or the Services to be performed under each Statement of Work, with such person being as identified in the Statement of Work. That person shall have authority to contractually bind the Customer on all matters relating to the relevant Goods and/or Services (including by signing Change Orders);
 - (c) provide for the Supplier, its Affiliates, agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's data, documents, information, Customer IPR and any other items whether or not owned by the Customer as are reasonably required by the Supplier for the purposes of due diligence during the preparation of any Statement of Work and in connection with any subsequent delivery of the Goods and/or performance of the Services, and ensure that any such items so provided are accurate and complete in all material respects;
 - (d) obtain and maintain all necessary licences and consents and comply with all Applicable Laws as required to enable the Supplier to provide the Goods and/or Services, including, but without limitation to, any Applicable Laws attaching to the Location ensuring that any such requirements for the Location are met at least 28 (twenty eight) Business Days before the date on which the delivery of the Goods is to occur and/or performance of the Services are to start;
 - (e) comply with any additional responsibilities of the Customer as set out in the relevant Statement of Work; and
 - (f) **[Any other relevant obligations].**

5.2 If the Supplier's performance of its obligations under this Agreement are prevented or delayed by any act or omission of the Customer, its Affiliates, agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Supplier shall be entitled, acting reasonably, to determine and operate to new and extended timescales and/or Milestones. For the avoidance of any doubt, and in recognition of the Suppliers operational environment, any such extension may not necessarily be equivalent to the delay so caused.

6. The Goods

6.1 The Goods provided by the Supplier pursuant to this Agreement may be provided either by way of a lease or by way of sale to the Customer in accordance with a Statement of Work and the relevant SoW Charges.

6.2 The Supplier warrants that on delivery of the Goods and for a period of 12 (twelve) months from the date of delivery to the Location (the '**Warranty Period**'), the Goods shall:

- (a) Conform in all material respects with their description and any applicable specification for the Goods as set out in the Statement of Work;
- (b) Be free from any material defects in design, material and workmanship;
- (c) Subject strictly to the proper operation and maintenance requirements of the Goods, be fit for the purpose held out by the Supplier and as set out in the Statement of Work.

6.3 Subject to clause 6.4 below, the Supplier shall at its sole option, repair or replace any goods which are defective if:

- (a) The Customer gives notice in writing during the Warranty Period and within a reasonable time of discovery that some or all of the Goods do not comply with the warranty as set out in clause 6.2; and
- (b) The Supplier is given a reasonable opportunity of examining the Goods.

6.4 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 6.2 if:

- (a) The Customer, its Affiliates, agents, sub-contractors or employees make any further use of the Goods after giving a notice in accordance with clause 6.3(a);
- (b) The defect arises because the Customer failed to follow any written or oral instructions provided by the Supplier in relation to the use, storage, installation, commissioning or maintenance of the Goods, or where there are no instructions, good industry practice;
- (c) The defect arises because the Customer failed to discharge any obligations arising under this Agreement in relation to the operation and maintenance of the Goods;
- (d) The Customer alters or repairs the Goods without the express prior written consent of the Supplier or is in breach of any obligations arising under this Agreement in relation to the Goods;

- (e) The defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal working conditions; or
- (f) The Goods differ from their description or specification in the Statement of Work as a result of changes made to ensure they comply with any Applicable Laws.

6.5 Where the Goods are purchased by the Customer:

- (a) The Customer shall pay the SoW Charges strictly in accordance with clause 9;
- (b) Risk in the Goods shall pass to the Customer on the sooner of:
 - (i) Delivery of the Goods by the Supplier or the Suppliers appointed sub-contractor, to the Location;
 - (ii) The collection of the Goods by the Customer, or the Customers appointed sub-contractor, from the Supplier or the Supplier's appointed agent.
- (c) Title in the Goods shall pass to the Customer only once full payment of the relevant SoW charges has been received by the Supplier.
- (d) Until such time as title passes to the Customer, the provisions of clause 6.6(e) below shall apply.
- (e) The Customer shall be granted a licence to use the Supplier IPR in accordance with clause 10.1 subject strictly to the payment of any relevant SoW Charges.

6.6 Where the Goods are to be leased to the Customer:

- (a) The Customer shall pay the SoW Charges strictly in accordance with clause 9;
- (b) Risk in the Goods shall pass to the Customer on the sooner of:
 - (i) Delivery of the Goods by the Supplier or the Suppliers appointed sub-contractor, to the Location;
 - (ii) The collection of the Goods by the Customer, or the Customers appointed sub-contractor, from the Supplier or the Supplier's appointed agent.
- (c) Unless expressly provided for in the relevant Statement of Work, title in the goods shall not pass to the Customer and the Goods shall remain the property of the Supplier.
- (d) Risk in the Goods shall pass to the Customer in accordance with clause 6.6(b) above.
- (e) At all times after risk in the goods has passed to the Customer, the Customer:
 - (i) shall fully and comprehensively insure the Goods for their full new-for-old replacement value (such value as shall be identified by the Supplier) against all usual perils (including but without limitation to, fire, flood and theft), and against any specific or unusual perils attributable to the Location, with a reputable insurer of at least an AM Best AAA rating or equivalent (the '**Insurance**');

- (ii) shall ensure the interest of the Supplier is clearly identified on all policy documents relating to the Insurance and is fully disclosed to the provider of the Insurance to the extent necessarily required to ensure the Supplier is the beneficiary of any funds paid-out in relation to a claim arising for any loss of or damage to the Goods;
- (iii) shall provide all documents as may be reasonably requested by the Supplier to evidence the existence of the Insurance and to demonstrate that all premiums have been paid in accordance with the same;
- (iv) shall inform the Supplier immediately if the Insurance is cancelled, suspended or prejudiced in any way to the extent the Goods are either not insured or cease to be fully and comprehensively insured whether in relation to their value or in relation to the risks covered by the Insurance;
- (v) shall inform the Supplier immediately if the Goods become the subject of any claim under the Insurance and allow the Supplier all reasonable involvement in the management of the claim, which shall include but shall not be limited to, allowing only the Supplier to decide at its sole and reasonable discretion whether to accept any settlement offered by the provider of the Insurance in relation to the claim;
- (vi) shall indemnify the Supplier and keep the Supplier so indemnified against any loss or damage arising in connection to the Goods provided always that the Supplier shall not be entitled to recover any loss or damage twice by way of the existence of the Insurance, however where any settlement provided under the Insurance gives rise to a demonstrable loss being incurred by the Supplier, the Customer shall make good any such loss in accordance with this indemnity;
- (vii) shall not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (viii) shall not charge, exercise any lien over, pledge or otherwise encumber the Goods in any way howsoever arising;
- (ix) shall not sub-lease, sub-licence or loan (whether or not for any form of consideration), move, modify, tamper or otherwise interfere with the Goods save for where any such interference is necessary in discharge of any of the Customer obligations that may arise in accordance with clause 6.7;
- (x) shall ensure the Goods are clearly marked and identified both physically and in any relevant manifests, registers, logs or inventories of the Customer, as being the property of the Supplier and, in the event of any insolvency, administration or other such analogous event affecting the Customer, ensure the Goods are clearly identified and separated from any other assets, chattels or belongings of the Customer.

6.7 Whether the Goods are leased to or purchased by the Customer; where the Goods are relevant to or will be used in connection with the ongoing provision of Services by the Supplier and/or required to maintain the standards achieved by the Tests, the Customer shall:

- (a) Maintain the Goods strictly in accordance with the terms of the relevant Statement of Work and/or in accordance with the manufacturer's maintenance requirements (the 'Maintenance'). Where the Maintenance is to be provided by the Supplier in accordance with a Statement of Work, the Customer shall allow the Supplier all reasonable access to the Goods as may be required by the Supplier or its agents or sub-contractors to provide the Maintenance. For the avoidance of any doubt, the Supplier shall have no liability in relation to any Services contingent upon the use of the Goods, where:
 - (i) the Customer has failed to adhere to the Maintenance or to allow the Supplier to discharge any obligations it may have under a Statement of Work to provide the Maintenance; or
 - (ii) failed to pay the SoW Charges in relation to the provision by the Supplier of any Maintenance.
- (b) Ensure that only suitably trained, qualified and authorised personnel operate (or maintain as the case may be) the Goods;
- (c) Undertake all proper and reasonable risk assessments and adhere to all Applicable Laws relating to the operation (and maintenance as the case may be) and holding of the Goods at the Location;
- (d) Indemnify and hold harmless and keep the Supplier so indemnified and held harmless against any liability, loss or damage arising from any accident, personal injury or death caused by the Goods or any Services that were dependant and contingent upon the proper operation and Maintenance of the Goods. The indemnity provided by the Customer pursuant to this clause 6.7(d) shall not apply where the Supplier is to operate and/or maintain the Goods in accordance with a Statement of Work provided always that the Customer has fully discharged its obligations in relation to that Statement of Work. The provisions of this Indemnity shall survive the termination or expiry of this Agreement.

7. Non-Solicitation

- 7.1 The Customer shall not, without the prior written consent of the Supplier, at any time from the Commencement Date to the expiry of the later of 12 (twelve) months after the end of the Term (if applicable) or the completion of a Statement of Work, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of such Goods and/or Services.
- 7.2 Any consent given by the Supplier in accordance with clause 7.1 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the

Supplier's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

8. Change Control

8.1 Either Party may propose changes to the scope or execution of the Goods and/or Services but no proposed changes shall come into effect until a relevant **Change Order** has been signed by both Parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:

- (a) the Goods and/or Services;
- (b) the SoW Charges;
- (c) the timetable for the Goods and/or Services; and
- (d) any of the other terms of the relevant Statement of Work.

8.2 If the Supplier wishes to make a change to the Goods and/or Services it shall provide a draft Change Order to the Customer.

8.3 If the Customer wishes to make a change to the Goods and/or Services:

- (a) it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed change; and
- (b) the Supplier shall, as soon as reasonably practicable after receiving the information at clause 8.3(a), provide a draft Change Order to the Customer.

8.4 If the parties:

- (a) agree to a Change Order, they shall sign it and that Change Order shall amend the relevant Statement of Work; or
- (b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure set out under clause 32.

8.5 The Supplier may charge for the reasonable time it spends on preparing and negotiating Change Orders, which implement changes proposed by the Customer pursuant to clause 8.3, on a time and materials basis at the Supplier's daily fee rates in force from time to time and which are available to the Customer on request. Any such charge shall be agreed with the Customer beforehand.

9. Charges and Payment

9.1 In consideration of the provision of the Goods and/or Services by the Supplier, the Customer shall pay the SoW Charges.

- 9.2 The amount of the SoW Charges shall be as set out in a Statement of Work.
- 9.3 The SoW Charges exclude the following, which shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice:
- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the Supplier or by individuals whom the Supplier engages in connection with the delivery of the Goods and/or provision of the Services;
 - (b) the cost of any transport, courier, postal or other delivery services required in connection with the provision of the Goods and/or Services;
 - (c) the cost to the Supplier of any materials or services procured by the Supplier from third parties required for the provision of the Goods and/or Services, where such items and their cost are approved by the Customer in advance; and
 - (d) any other additional costs that were reasonably unforeseen at the date the Statement of Work was agreed and which shall be addressed by way of a Change Order in accordance with clause 8 above.
- 9.4 The Supplier shall invoice the Customer for the SoW Charges at the sooner of:
- (a) the intervals specified, or on the achievement of the Milestones indicated, in the Statement of Work; or
 - (b) if no intervals or Milestones are specified, at the end of each calendar month; or
 - (c) on completion of the delivery of the Goods and/or performance of the Services under the Statement of Work.
- 9.5 Unless expressly agreed to the contrary in a relevant Statement of Work, the Customer shall pay each invoice submitted to it by the Supplier, by cleared funds transfer within 30 (thirty) days of the date of the invoice to a bank account nominated in writing by the Supplier from time to time.
- 9.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this Agreement on the due date:
- (a) the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the base rate of Barclays Bank Plc from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and
 - (b) the Supplier may suspend part or all of the delivery of the Goods and/or performance of the Services until payment has been made in full.
- 9.7 All sums payable to the Supplier under this Agreement:

- (a) are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. Intellectual Property Rights

10.1 In relation to the Goods:

- (a) the Supplier and its licensors shall at all time retain ownership and control of all Supplier IPR in the Goods;
- (b) subject strictly to the payment by the Customer of the SoW Charges, the Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, non-exclusive, royalty-free, revocable licence for the Territory and for the duration of the Agreement, for the purpose of using the Supplier IPR in the Goods in the ordinary course of the Customer's business; and
- (c) the Customer shall:
 - (i) not sub-license, use outside of the Territory, assign or otherwise transfer the rights granted in clause 10.1(b) without the express prior written consent of the Supplier, such consent shall not be unreasonably withheld or delayed; and
 - (ii) seek the express prior written consent of the Supplier before undertaking any act or making any omission in relation to the Supplier IPR, such consent shall not be unreasonably withheld or delayed.
- (d) For the avoidance of any doubt, the licence granted for the Customer's use of the Supplier IPR pursuant to this clause 10, is granted solely and expressly for the Customer's use of the Goods only. It is a material condition of this licence that the Customer shall not decompile, reverse engineer, extract or otherwise modify the Supplier IPR for any other use.
- (e) In the event of a breach of clause 10.1(d) above, any licence for the use of the Supplier IPR shall automatically be revoked and cease. The Customer acknowledges and accepts that in such a scenario damages would be an inadequate remedy and the Supplier shall be entitled to seek the remedy of injunctive relief whether on a final or interim basis.

10.2 In relation to the Customer IPR, the Customer:

- (a) and its licensors shall retain ownership of the Customer IPR; and
- (b) grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable, irrevocable licence to use, copy and modify the Customer IPR for the Term and for the purpose of providing the Goods and/or Services to the Customer.

10.3 The Supplier:

- (a) warrants that the receipt and use of the Goods by the Customer in accordance with clause 10.1 shall not infringe the rights, including any Intellectual Property Rights (but excluding the Customer IPR), of any third party;
- (b) shall, subject to clause 14.3, keep the Customer indemnified in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt and use of the Goods; and
- (c) shall not be in breach of the warranty at clause 10.3(a), and the Customer shall have no claim under the indemnity at clause 10.3(b) to the extent the infringement arises from:
 - (i) the use of any Intellectual Property Rights belonging to the Customer in the development of, or the inclusion of such Intellectual Property Rights in, the Goods;
 - (ii) any modification of the Goods other than by or on behalf of the Supplier; and
 - (iii) compliance with the Customer's specifications or instructions, where infringement could not have been avoided while complying with such specifications or instructions.

10.4 The Customer:

- (a) warrants that it is the sole legal and beneficial owner of the Customer IPR, and the receipt and use of the same in the performance of this Agreement by the Supplier, its agents, subcontractors or consultants shall not infringe the rights including any Intellectual Property Rights, of any third party; and
- (b) shall keep the Supplier indemnified in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Supplier as a result of or in connection with any claim brought against the Supplier, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Agreement of the Customer IPR.

10.5 If either party (the '**Indemnifying Party**') is required to indemnify the other party (the '**Indemnified Party**') under this clause 10, the Indemnified Party shall:

- (a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 10.3(b) or clause 10.4(b) (as applicable) (the '**IPRs Claim**');

- (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (c) provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
- (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

10.6 Either party shall immediately notify the other in writing, giving full particulars if any of the following matters come to its attention:

- (a) any actual, suspected or threatened infringement of any of the Protected Rights;
- (b) any claim made or threatened that the Goods infringe the rights of any third party;
- (c) any form of attack, charge or claim to which the Protected Rights may be subject.

10.7 In respect of the matters listed in clause 10.6:

- (a) the party to whom the Protected Rights apply shall, at its absolute discretion, decide what action to take, if any;
- (b) that party shall have exclusive control over, and conduct of, all claims and proceedings;
- (c) the other party shall not make any admissions other than to the first party and shall provide the first party with all assistance that it may reasonably require in the conduct of any claims or proceedings; and
- (d) the party that is the subject of the Protected Rights shall be entitled to retain all sums recovered in any action for its own account.

10.8 The provisions of sections 101 and 101A of the CDPA 1988 are expressly excluded where they conflict with the provisions of clause 10.7.

11. Compliance with Laws and Policies

11.1 In performing their respective obligations under this Agreement, the Supplier and the Customer shall comply with the Applicable Laws:

11.2 Changes to the Goods and/or Services required as a result of changes to the Applicable Laws shall be agreed via the change control procedure set out in clause 8.

12. Data Protection, Data Processing and Communications

- 12.1 The Customer and the Supplier acknowledge that for the purposes of the Data Protection Act 1998, the Customer is the Data Controller and the Supplier is the Data Processor in respect of any Personal Data.
- 12.2 The Customer warrants and represents that it has properly and fully obtained the express consent of any Data Subject whose Personal Data is to be provided to the Supplier whether or not as part of the Customer IPR, for the Supplier to Process in the provision of the Goods and/or Services.
- 12.3 The Supplier shall Process the Personal Data only in accordance with the Customer's instructions from time to time and shall not Process the Personal Data for any purposes other than those expressly authorised by the Customer.
- 12.4 The Supplier shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.
- 12.5 Each party warrants to the other that it will Process the Personal Data in compliance with all Applicable Laws, enactments, regulations, orders, standards and other similar instruments.
- 12.6 The Supplier warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:
- (a) take appropriate technical and organisational measures against the unauthorised or unlawful Processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:
 - (i) the harm that might result from such unauthorised or unlawful Processing or accidental loss, destruction or damage; and
 - (ii) the nature of the data to be protected; and
 - (b) take reasonable steps to ensure compliance with those measures.
- 12.7 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 12. For the avoidance of any doubt, and in recognition of the Supplier's capacity as a Data Processor only, the Supplier's total aggregate liability under the indemnity provided by this clause 12.7 shall be limited in accordance with clause 14.3 below.
- 12.8 The Customer acknowledges that the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to use and Process the Personal Data. Consequently, the Supplier will not be liable for any claim brought by a Data Subject arising from any action or

omission by the Supplier, to the extent that such action or omission resulted directly from the Customer's instructions.

- 12.9 Where any form of mobile telephone and/or data communications service is to be provided and/or used in the performance of the Services under a Statement of Work (the '**Communications**'), it is acknowledged and accepted by the Customer that the Supplier has no reasonable control over the reliability or availability of the Communications and as such the Supplier shall not be in breach of this Agreement where any such Communications are unavailable.
- 12.10 Without prejudice to clause 12.9 above, where the Communications are unavailable for a period in excess 20 (twenty) Business Days, the parties shall work together reasonably and in good faith to source a new provider of the Communications and amend the Statement of Work, including the SoW Charges as may be required and in accordance with the provisions of clause 8.

13. Confidentiality

- 13.1 Each party undertakes that it shall not at any time disclose to any person, any confidential information including, but without limitation to, the Protected Rights, business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs (collectively the '**Confidential Information**'), except as permitted by clause 13.2(a).
- 13.2 Each party may disclose the other party's Confidential Information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause 13.; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 No party shall use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

14. Limitation of Liability

- 14.1 Nothing in this Agreement shall limit or exclude either party's liability for:
- (a) death or personal injury caused by its negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) in relation to the Supplier, breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or

- (d) any other liability which cannot be limited or excluded by applicable law.
- 14.2 Subject to clause 14.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:
 - (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of or damage to goodwill or reputation;
 - (f) loss of use or corruption of software, data or information; and
 - (g) any indirect or consequential loss.
- 14.3 Subject to clause 14.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty (including any breach arising under the Data Protection Act 1998 or its obligations arising in clause 12 above in relation to the same), or otherwise, arising under or in connection with its obligations arising under this Agreement shall be limited to the lesser of:
 - (a) a sum equivalent to the net value of the SoW Charges (excluding any charges of a type as set out in clause 9.3) for the Statement of Work in connection with which the act or omission of the Supplier gave rise to the liability; or
 - (b) the sum insured of a relevant insurance policy held by the Supplier, which provides insurance cover for the act or omission of the Supplier which gave rise to the liability.
- 14.4 For the avoidance of any doubt and without prejudice to any other provision of this Agreement, the Supplier shall have no liability under this agreement howsoever arising, where the Customer has failed to adhere to all Applicable Laws concerning the Location and/or has failed to discharge its obligations arising under this Agreement including, but without limitation to, its obligations under clauses 6.7 and 18.3.
- 14.5 The terms implied by sections 3 (transfer by description), 4 (fitness for purpose) and 5 (transfer by sample) of the Supply of Goods and Services Act 1982, and the implied terms arising from the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from this Agreement.
- 14.6 For the further avoidance of any doubt, in relation to any liability arising from or attaching to the Supplier under this agreement, and as regards the interpretation of all such liabilities (howsoever arising) and this clause 14 generally; it is acknowledged, accepted and agreed by the Customer that the Supplier shall and can only be so liable in relation to those matters arising which are within the Supplier's reasonable control in relation to the supply of Goods and/or the Services and

only then subject strictly to the proper and full discharge of the Customer's obligations in relation to the same (including but without limitation to the Customer Obligations). 'Within the reasonable control of the Supplier' shall mean strictly only those matters concerning the supply of Goods and Services by the Supplier, in accordance with this Agreement and the agreed key performance indicators set out in the Statement of Work, and shall not extend in any way to the general supply and cleanliness of water provided to and/or from the Location, or to and/or from the Customer generally.

15. Brexit

15.1 If a Brexit Trigger Event occurs (as more particularly defined in clause 15.2 below), either Party may:

- (a) Require the other Party to negotiate in good faith an amendment to the Agreement in its entirety or any specific Statement of Work in order to alleviate the Brexit Trigger Event; and
- (b) If no such amendment is made to this agreement within 30 (thirty) Business Days, terminate by giving the other Party not less than 3 calendar months written notice. On such termination, the provisions of clause 18 shall apply.

15.2 A Brexit Trigger Event means any of the following occurring at any time after the United Kingdom ceases to be a Member State of the European Union, directly caused by Brexit:

- (a) **Change in Law:** a change in the Law or a new requirement to comply with any existing Law or existing Law ceasing to apply to a Party. For these purposes, 'Law' means any legal provision a Party must comply with including any Law, statute, subordinate legislation within the meaning of s.21(1) of the Interpretation Act 1978, enforceable EU right within the meaning of s.2 of the European Communities Act 1972, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a court of law, or requirement of any regulatory body, whether in the UK or elsewhere;
- (b) **Trade Tariff:** in any jurisdiction, imposition of or change to a duty, tax or levy imposed on imports or exports of any raw materials or components used by the Supplier in the course of providing the Goods or delivery the Services, and which causes an Adverse Impact;
- (c) **Licence or Consent:** in any jurisdiction, the loss of, change to or imposition of a new requirement for any licence or consent required by a Party to perform its obligations under this Agreement or to commercially exploit the provision of the Goods and/or Services;
- (d) **Currency Fluctuation:** a change of more than 7.5% (seven point five per cent) to the rate of exchange of sterling against the dollar or euro since the SoW Charges under any Statement of Work were agreed. The rate of exchange for these purposes shall be the daily spot rate published by the Bank of England;

- (e) Other Change: an unforeseeable change to the business or economic environment in which a Party operates, which is not caused by clauses 15.2(a) to 15.2(d) above and which causes a demonstrable Adverse Impact to that Party.

15.3 For the purposes of clause 15.2 above, and Adverse Impact shall mean any of the following:

- (a) A substantial adverse impact on a Party's ability to perform its obligations arising under the Agreement in accordance with its terms or the Law;
- (b) An increase in costs incurred by a Party in performing the Agreement, of at least 15% since the SoW Charges were agreed.

15.4 The impacted Party may initiate a renegotiation under clause 15.1 by serving a written notice on the other Party (a 'Brexit Notice'), which shall provide all reasonable details of the relevant Brexit Trigger Event and supporting evidence of the Adverse Impact. Either Party may serve a Brexit Notice, but a Party cannot serve more than one Brexit Notice for the same impact. On delivery of the Brexit Notice:

- (a) The Parties shall meet within 7 (seven) Business Days of the date of the Brexit Notice and as reasonably thereafter to discuss in good faith such amendments as may be required to the Agreement generally or any specific Statement of Work;
- (b) The affected Party shall promptly comply with all reasonable requests made by the other Party for additional information and documents relating to the Adverse Impact suffered and the Brexit Trigger Event relied upon, provided always that information so disclosed shall be a Party's confidential information for the purposes of clause 13; and
- (c) Any amendments to this Agreement generally or to any specific Statement of Work in isolation, shall be recorded in accordance with clause 21.

16. Termination by Cause

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

- (a) the other party commits a material breach of any term of this Agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 (fourteen) Business Days after being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- (g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.1(c) to clause 16.1(i) (inclusive); or
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

16.2 For the purposes of clause 16.1(a) **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this Agreement or an individual Statement of Work over the Term of this Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

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

- (a) the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 5 (five) Business Days after being notified in writing to make such payment; or
- (b) there is a Change of Control of the Customer.

17. Termination for Convenience

17.1 Where the Customer wishes to terminate this Agreement before the end of the Term, or terminate any individual Statement of Work prior to its completion, for reasons of its own convenience or in the absence of any breach by the Supplier or any other scenario arising pursuant to clause 16.1 above, then in addition to the provisions of clause 18 below, the Customer shall:

- (a) Pay to the Supplier on an indemnity basis, a sum equivalent to the lost and irrecoverable costs incurred by the Supplier in consequence of the Customer's premature termination of the Agreement and/or specific Statement of Work. Such lost and irrecoverable costs may include, but shall not be limited to:
 - (i) the costs of the unused proportion of any undertakings entered into by the Supplier in order to deliver the Goods and/or provide the Services;
 - (ii) the costs of the unused proportion of any advance purchases of (for example but without limitation to) materials, supplies, tools, maintenance services, support services and Communications, as may have been undertaken by the Supplier in order to deliver the Goods and/or Services;
 - (iii) the costs associated with any removal or transportation of the Goods from the Location including any temporary storage charges for the Goods whilst the Supplier sources an alternative location or where the Supplier cannot reasonably store the Goods at the time of the Customer's premature termination;
 - (iv) the costs of any decommissioning of the Goods and any associated systems relating to the Goods;
- (b) Indemnify, defend and hold harmless the Supplier in relation to any liabilities, losses, claims, damages, penalties or any other matters arising in relation to the employment of any employees or workers, or the appointment of any sub-contractors (collectively the 'Labour Arrangements') where the Supplier is placed in any breach of contract concerning the Labour Arrangements as a consequence of the premature termination by the Customer. The provision of this indemnity shall be without prejudice to the Supplier's duty to act reasonably and in accordance with generally accepted employment practice in relation to any employment matters and the Customer's obligations which may arise pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006.

18. Consequences of Termination or Expiry

18.1 Without prejudice to clause 17 above as may be applicable, on the natural expiry or termination of this Agreement howsoever arising:

- (a) all existing Statements at Work shall terminate automatically;

- (b) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices (and, if applicable, interest) in respect of the Goods and/or Services supplied. For any Goods and/or Services for which no invoice has been provided at the date of termination or natural expiry, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (c) at the Suppliers request and in the alternative to clause 18.1(b) above, the Customer shall within 5 (five) Business Days, return any Goods to the Supplier that have not been paid for or leased by the Customer in accordance with the terms of this Agreement. If the Customer fails to do so, then the Supplier may enter the relevant Location and take possession of such Goods. Until the Goods have been returned or repossessed, the Customer shall be solely responsible for their safe keeping and the provisions of clause 6.6(e) and as appropriate in relation to the Customer, clause 6.7 shall continue to apply;
- (d) any licence granted by the Supplier for the use of the Supplier IPR or by the Customer for the use of the Customer IPR, shall immediately be revoked and the use of that Party's respective element of the Protected Rights by the other Party shall immediately cease. Notwithstanding the provisions of this clause, the Parties may negotiate the terms of a new licence for each other's use of their respective Protective Rights, which by mutual agreement may survive the termination or expiry of this Agreement;
- (e) the Parties shall work together and in good faith where such termination or expiry gives rise to a relevant transfer pursuant to regulation 3 of the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- (f) the following clauses shall continue in force: clause 1. (Interpretation), clause 6.7 (in relation to the Customer's indemnity, and obligations in relation to the Goods), clause 7. (Non-solicitation), clause 10. (Intellectual property rights), clause 13. (Confidentiality), clause 14. (Limitation of liability), clause 18. (Consequences of termination), clause 22. (Waiver), clause 24. (Severance), clause 26. (Conflict), clause 32. (Multi-tiered dispute resolution procedure), clause 33. (Governing law) and clause 34. (Jurisdiction).

18.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

18.3 The Customer warrants and represents that whether this Agreement comes to an end by way of termination (howsoever arising) or natural expiry; the Customer shall continue to meet any and all obligations that arose under this Agreement in relation to the proper operation, insurance obligations and Maintenance of the Goods and, insofar as the operation and management of the Location was relevant to any Goods or Services; the Location (the '**Continuing Obligations**'). For the avoidance of any doubt, the Continuing Obligations attaching to the Customer in relation to the Location shall include, but shall not be limited to, maintaining the requisite level of cleaning and operating requirements for any water, heating and cooling systems in order to maintain the

standard of the Tests achieved at the completion of a relevant Statement of Work and at SoW Sign-off.

- 18.4 The Supplier shall not be liable or responsible for any failure, liability, loss or damage of any kind howsoever arising in relation to or connected with the performance of the Goods, the provision of the Services and the maintenance of any agreed service standards or the standards achieved, where relevant, by the Tests; where the Customer fails in whole or in part to adhere to the Continuing Obligations and the Customer shall, in addition and without prejudice to any other indemnity, indemnify and hold harmless the Supplier in relation to the same.

19. Force Majeure

- 19.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);and
- (h) interruption or failure of a utility service.

- 19.2 Provided it has complied with clause 19.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (the '**Affected Party**'), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

- 19.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

- 19.4 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event notify the other party in writing of the Force Majeure Event, the date on which it started, its likely

or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and

- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

19.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 30 (thirty) Business Days, the party not affected by the Force Majeure Event may terminate this Agreement by giving a further 14 (fourteen) Business Days written notice to the Affected Party.

20. Assignment and other Dealings

20.1 Neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the express prior written consent of the other, such consent not to be unreasonably withheld or delayed.

21. Variation

Subject to clause 8, no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

22. Waiver

22.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

22.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

22.3 A party that waives a right or remedy provided under this Agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

23. Rights and Remedies

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

24. Severance

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

25. Entire Agreement

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

26. Conflict

If there is an inconsistency between any of the clauses within the main body of this Agreement and the provisions of the Statement of Work, the clauses within the main body of this Agreement shall prevail.

27. No Partnership or Agency

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

28. Anti-Bribery

- 28.1 The parties shall:
- (a) Maintain adequate procedures and comply with all Applicable Laws relating to anti-bribery and anti-corruption including, but not limited to the Bribery Act 2010;

- (b) not engage in any activity, practice or conduct, which would constitute an offence under section 1, section 2 or section 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
- (c) promptly report to each other any request or demand for any undue financial or other advantage of any kind received in connection with the performance of this Agreement.

28.2 Breach of this clause 28 shall be deemed a material breach of this Agreement under clause 16.2.

28.3 For the purpose of this clause 28, the meaning of **adequate procedures** shall be determined by reference to section 7(2) of the Bribery Act 2010 and any guidance issued under section 8 of the same.

29. Third Party Rights

No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

30. Notices

30.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the e-mail address specified in the Statement of Work.

30.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
- (c) if sent by email, at 9.00 am on the next Business Day after transmission.

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

31. Counterparts

31.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

31.2 Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by (a) fax or (b) email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the Agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

31.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

32. Multi-Tiered Dispute Resolution Procedure

32.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (the '**Dispute**') then except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (the '**Dispute Notice**'), together with relevant supporting documents. On service of the Dispute Notice, the Customer and the Supplier shall attempt in good faith to resolve the Dispute through their usual channels of communication;
- (b) if the Customer and the Supplier are for any reason unable to resolve the Dispute within 30 (thirty) days of service of the Dispute Notice, the Dispute shall be referred to the managing director (or equivalent person) of each party who shall attempt in good faith to resolve it; and
- (c) if the managing director (or equivalent person) of the Customer and the Supplier are for any reason unable to resolve the Dispute within 30 (thirty) days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (the '**ADR notice**') to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 14 (fourteen) Business Days after the date of the ADR notice.

32.2 No party may commence any court proceedings under clause 34 in relation to the whole or part of the Dispute until 15 (fifteen) Business Days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

32.3 If the Dispute is not resolved within 21 (twenty one) Business Days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 34.

32.4 Without prejudice to any other rights or remedies held by either party, each party acknowledges and agrees that in preservation of the Protected Rights, damages alone would not be an adequate remedy for any breach of the terms of this Agreement. Accordingly, each party shall be

entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.

33. Governing law

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

34. Jurisdiction

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

This Agreement has been entered into on the date stated at the beginning of it.

Schedule 1 Statements of Work

Signature

Signed by a director for and on
behalf of the Supplier

.....

Director

Signed by a director for and on
behalf of the Customer

.....

Director