

# OPALSTONE GROUP

## TERMS AND CONDITIONS OF SUPPLY OF GOODS AND SERVICES

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## 1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

<b>Applicable Law</b>	means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national;
<b>Bribery Laws</b>	means the Bribery Act 2010 and all Applicable Laws in connection with bribery or anti-corruption;
<b>Business Day</b>	means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;
<b>Conditions</b>	means the Supplier's terms and conditions of sale set out in this document;
<b>Confidential Information</b>	means any commercial, financial or technical information, information relating to the Deliverables, plans, confidential know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by the Customer in performing its obligations under, or otherwise pursuant to the Contract;
<b>Contract</b>	means this agreement between the Supplier and the Customer for the sale and purchase of the Deliverables incorporating these Conditions and the Order, and including all its schedules, attachments, annexures and statements of work;
<b>Controller</b>	shall have the meaning given in applicable Data Protection Laws from time to time;
<b>Customer</b>	means the named party in the Contract which has agreed to purchase the Deliverables from the Supplier and whose details are set out in the Order;
<b>Data Protection Laws</b>	means, as binding on either party or the Services: <ul style="list-style-type: none"><li>(a) the GDPR;</li><li>(b) the Data Protection Act 2018;</li><li>(c) any laws which implement any such laws; and</li><li>(d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;</li></ul>

<b>Data Protection Supervisory Authority</b>	means any regulator, authority or body responsible for administering Data Protection Laws;
<b>Data Subject</b>	shall have the meaning in applicable Data Protection Laws from time to time;
<b>Deliverables</b>	means the Goods or Services or both as the case may be;
<b>Documentation</b>	means any descriptions, instructions, manuals, literature, technical details or other related materials supplied in connection with the Deliverables;
<b>Force Majeure</b>	means an event or sequence of events beyond a party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract;
<b>Further Charges</b>	means engineer fee at £220 ½ day and £440 at 1 day and the rate payable for additional products, materials, or amended hired services.  means £60 per callout fee is applicable for site members working different times to connection form without prior notice (double rate on bank holidays) Call-out fees also apply when the site boundary is unsure, or gates and doors have been left open for trespassers to gain easy access.
<b>GDPR</b>	means the General Data Protection Regulation, Regulation (EU) 2016/679;
<b>Goods</b>	means the Sale goods and Rental goods and related accessories, spare parts and Documentation and other physical material set out in the Order or understood by the parties to be included in the Goods and to be supplied by the Supplier to the Customer in accordance with the Contract;
<b>International Organisation</b>	has the meaning given in the applicable Data Protection Laws from time to time;
<b>Location</b>	means the address or addresses for delivery of the Goods and performance of the Services as set out in the Order or such other address or addresses as notified by the Customer to the Supplier at least 14 Business Days prior to performance;
<b>Minimum Contract Hire</b>	means the term specified in a Quotation for Rental Goods as minimum term for the Contract

<b>Order</b>	means the Customer's order for the Deliverables;
<b>Personal Data</b>	has the meaning given in the applicable Data Protection Laws from time to time;
<b>Personal Data Breach</b>	has the meaning given in the applicable Data Protection Laws from time to time;
<b>Price</b>	has the meaning given in clause 3.1;
<b>Processing</b>	has the meaning given to it in applicable Data Protection Laws from time to time (and related expressions, including process, processed, and processes shall be construed accordingly);
<b>Processor</b>	has the meaning given to it in applicable Data Protection Laws from time to time;
<b>Protected Data</b>	means Personal Data received from or on behalf of the Customer in connection with the performance of the Supplier's obligations under the Contract;
<b>Quotation</b>	means the written quotation prepared by the Supplier and sent to the Customer setting out the Deliverables and the Price,
<b>Rental Goods</b>	means security and other site equipment which may be refurbished or previously used and are described as Rental Goods in the Order and which are not Sale Goods and in which the Supplier retains title and which are rented to the Customer.
<b>Sale Goods</b>	means security and other site equipment described as Sale Goods in the Order and which are not Rental Goods and which it is intended title will pass to the Customer.
<b>Services</b>	means the services set out in the Order and to be supplied by the Supplier to the Customer in accordance with the Contract;
<b>Sub-Processor</b>	means any agent, subcontractor or other third party (excluding its employees) engaged by the Supplier for carrying out any processing activities on behalf of the Customer in respect of the Protected Data;
<b>Supplier</b>	means Opalstone Group Ltd of ....;
<b>Supplier Personnel</b>	all employees, officers, staff, other workers, agents and consultants of the Supplier, its affiliates and any of their sub-contractors who are engaged in the performance of the Services from time to time;

**VAT** means value added tax under the Value Added Tax Act 1994 or any other similar sale or fiscal tax applying to the sale of the Deliverables; and

**Warranty Period** has the meaning given in clause 12.1.

1.2 In these Conditions, unless the context otherwise requires:

- 1.2.1 a reference to the Contract includes these Conditions, the Quotation, the Order, and their respective schedules, appendices and annexes (if any);
- 1.2.2 any clause, schedule or other headings in these Conditions are included for convenience only and shall have no effect on the interpretation of these Conditions;
- 1.2.3 a reference to a 'party' means either the Supplier or the Customer and includes that party's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.6 a reference to a gender includes each other gender;
- 1.2.7 words in the singular include the plural and vice versa;
- 1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
- 1.2.10 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

## **2 Application of these conditions**

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing.
- 2.3 Save that the Contract may be extended beyond the Minimum Contract Hire term without notice by the Customer continuing to pay the agreed Price, no variation of these Conditions or to an Order or to the Contract, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each of the Customer and the Supplier respectively.

2.4 The Supplier will submit a Quotation to the Customer. If the Customer accepts the Quotation they will place an Order. Each Order by the Customer to the Supplier shall be an offer to purchase the Deliverables subject to the Contract including these Conditions. The Customer is responsible for ensuring the accuracy of the description of the Deliverables in the Order and for providing the Supplier with any necessary information relating to the Deliverables to enable the Supplier to perform the Contract.

If the Supplier is unable to accept an Order, it shall notify the Customer as soon as reasonably practicable.

2.5 The offer constituted by an Order shall remain in effect and capable of being accepted by the Supplier for 28 Business Days from the date on which the Customer submitted the Order, after which time it shall automatically lapse and be withdrawn.

2.6 The Customer may not cancel or terminate any Order once it has been placed.

2.7 For the avoidance of doubt, if the Customer purports to cancel or terminate an Order which includes Rental Goods, the Customer shall immediately become liable for the total Price payable for the Minimum Contract Hire term.

2.8 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Deliverables shall arise, until the earlier of:

2.8.1 the Supplier's written acceptance of the Order; or

2.8.2 the Supplier delivering or performing the Deliverables or notifying the Customer that they are ready to be delivered or performed (as the case may be).

2.9 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.

2.10 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply Deliverables and are incapable of being accepted by the Customer.

2.11 Representations made by the Supplier's employees or agents, marketing and other promotional material relating to the Deliverables are illustrative only and do not form part of the Contract unless confirmed in writing in this Contract or in the Order.

### **3 Price**

3.1 The Price for the Deliverables shall be as set out in the Quotation and the Order or, where no such provision is set out, shall be as advised by the Supplier from time to time before the date the Order is placed (the **Price**). In the absence of a specific provision to the contrary in the Quotation and the Order the Price or the first instalment of the Price will become payable when the Rental Goods or the Sale Goods are turned on regardless of whether the Services are completed.

3.2 In the case of Rental Goods the Price is calculated based on the cost of all Deliverables, including the Goods, Services, Connection Fees and Response.

3.3 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.

- 3.4 The Supplier may increase the Price at any time by giving the Customer not less than 14 Business Days' notice in writing provided that the increase does not exceed 10% of the Price in effect immediately prior to the increase.
- 3.5 Notwithstanding clause 3.4, the Supplier may increase the Price with immediate effect by written notice to the Customer where there is an increase in the direct cost to the Supplier of supplying the relevant Deliverables and which is due to any factor beyond the control of the Supplier.
- 3.6 In the event that it is necessary for work to be carried out to correct, maintain or repair any damage to the Goods for any reason the Further Charges will be payable.

#### **4 Payment**

- 4.1 The Supplier shall invoice the Customer for the Deliverables, partially or in full, at any time following acceptance of an Order.
- 4.2 The Customer shall pay all invoices:
- 4.2.1 in full without deduction or set-off, in cleared funds within 30 of the date of each invoice; and
  - 4.2.2 to the bank account nominated by the Supplier.
- 4.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date the Supplier may at its discretion and without limiting its other rights:
- 4.3.1 charge interest on such sums at 5% a year above the base rate of Barclays from time to time in force, and interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment;
  - 4.3.2 cancel the Contract and repossess the Goods or suspend performance of the Deliverables

#### **5 Credit limit**

The Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.

#### **6 Delivery and performance**

- 6.1 The Goods shall be delivered by the Supplier, or its nominated carrier, to the Location on the date or dates specified in the Order.
- 6.2 The Goods shall be deemed delivered on arrival only of the Goods at the Location by the Supplier or its nominated carrier (as the case may be).
- 6.3 The Services shall be performed by the Supplier at the Location on the date or dates specified in the Order.
- 6.4 The Services shall be deemed delivered by the Supplier only on completion of the performance of the Services at the Location.



- 6.5 The Supplier may deliver the Goods or perform the Services in instalments. Any delay or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.6 Each delivery or performance of the Deliverables shall be accompanied by a delivery note stating:
- 6.6.1 the date of the Order;
  - 6.6.2 the relevant Customer and Supplier details;
  - 6.6.3 if Goods, the product numbers and type and quantity of Goods in the consignment;
  - 6.6.4 if Services, the category, type and quantity of Services performed;
  - 6.6.5 any special instructions, handling and other requests; and
  - 6.6.6 in the case of Goods, whether any packaging material is to be returned, in which case the Customer shall, after the Goods are unpacked, make them available for collection by the Supplier at the Supplier's expense.
- 6.7 Time is not of the essence in relation to the performance or delivery of the Deliverables. The Supplier shall use its reasonable endeavours to meet estimated dates for delivery and performance, but any such dates are indicative only.
- 6.8 The Supplier shall not be liable for any delay in or failure of performance caused by:
- 6.8.1 the Customer's failure to make the Location available;
  - 6.8.2 the Customer's failure to prepare the Location as required for the Deliverables;
  - 6.8.3 the Customer's failure to provide the Supplier with adequate instructions for performance or delivery or otherwise relating to the Deliverables;
  - 6.8.4 Force Majeure.
- 6.9 If the Supplier is unable to perform the Deliverables:
- 6.9.1 for the reasons set out in clauses 6.8.1 to 6.8.3 above the Supplier may charge a fee to reflect the costs incurred. The aborted fee will be £720 plus VAT.
  - 6.9.2 due to restrictions imposed by the Customer, for example if the Customer's policy on safety bans ladders and the Supplier considers ladder work to be acceptable and safe, the Supplier may make Further Charges.
- 6.10 If the Customer fails to accept delivery of the Goods the Supplier shall store and insure the Goods pending delivery, and the Customer shall pay all costs and expenses incurred by the Supplier in doing so.
- 6.11 If 14 Business Days following the due date for delivery or collection of the Goods, the Customer has not taken delivery of or collected them, the Supplier may resell, let or otherwise dispose of the Goods without any obligation or liability to the Customer, except as provided for in clauses 6.11.1 and 6.11.2. The Supplier shall:
- 6.11.1 deduct all reasonable storage charges and costs of resale; and

- 6.11.2 account to the Customer for any excess of the resale or rental price over, or invoice the Customer for any shortfall of the resale or rental price below, the Price paid by the Customer for the Goods.
- 6.12 If during the performance of the Deliverables, the Supplier is required to install any extra telephone lines, data sims or similar, the Customer:
- 6.12.1 shall not use those lines or data sims other than as agreed between the Customer and the Supplier; and
- 6.12.2 shall, in the event that the Customer is in breach of paragraph 6.11.1 above, indemnify the Supplier in respect of all charges incurred as a consequence of such breach.

## **7 Risk**

Risk in the Goods shall pass to the Customer on delivery.

## **8 Title to Sale Goods**

- 8.1 Title to the Sale Goods shall pass to the Customer once the Supplier has received payment in full and cleared funds for the Sale Goods.
- 8.2 Until title to the Sale Goods has passed to the Customer, the Customer shall:
- 8.2.1 hold the Sale Goods as bailee for the Supplier;
- 8.2.2 store the Sale Goods separately from all other material in the Customer's possession;
- 8.2.3 take all reasonable care of the Sale Goods and keep them in the condition in which they were delivered;
- 8.2.4 insure the Sale Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting the Supplier's interest on the policy;
- 8.2.5 ensure that the Sale Goods are clearly identifiable as belonging to the Supplier;
- 8.2.6 not remove or alter any mark on or packaging of the Sale Goods;
- 8.2.7 inform the Supplier immediately if it becomes subject to any of the events or circumstances set out in clauses 20.1.1 to 20.1.4 or 20.2.1 to 20.2.11; and
- 8.2.8 on reasonable notice permit the Supplier to inspect the Sale Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Sale Goods as the Supplier may request from time to time.
- 8.3 If, at any time before title to the Sale Goods has passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses 20.1.1 to 20.1.4 or 20.2.1 to 20.2.11, the Supplier may:
- 8.3.1 require the Customer at the Customer's expense to re-deliver the Sale Goods to the Supplier; and

- 8.3.2 if the Customer fails to do so promptly, enter any premises where the Sale Goods are stored and repossess them.

## **9 Rental Goods**

9.1 The Customer shall:

9.1.1 keep the Rental Goods at the [*Delivery Location*] (only) at all times during the Hire Period;

9.1.2 ensure that the conditions, premises and general environment in which the Rental Goods are kept and/or used do not adversely affect its condition or functionality or otherwise place put it or any part if it at risk;

9.1.3 ensure the safety of all staff and others who have access to the Rental Goods is maintained at all times;

9.1.4 be responsible for any loss or damage caused to the land and/or buildings to which the Rental Goods are affixed;

9.1.5 if required by legislation or statutory enactment make any required alterations or modifications to the Rental Goods at their expense

9.1.6 operate and use the Rental Goods only for the purposes for which they are designed; and

9.1.7 ensure that all users of the Rental Goods are suitably trained and skilled staff in accordance with any operating instructions.

9.2 The Customer shall maintain the Rental Goods in good working condition. While the Customer shall not modify the Rental Goods.

9.3 The Customer shall:

9.3.1 keep the Supplier fully informed about all work, alterations or modifications it carries out on the Rental Goods;

9.3.2 ensure that it complies with the Supplier's requirements as to the source and type of any replacement parts; and

9.4 Ownership of any replacements parts shall vest in the Supplier on their installation.

## **10 Possession and ownership of the Rental Goods**

10.1 The Supplier shall at all times retain ownership of the Rental Goods and the Customer shall not do or allow to occur anything which might adversely affect the Supplier's right, title or interest in the Rental Goods.

10.2 The Customer shall ensure that the Rental Goods and the premises in which they are housed are kept safe and secure.

10.3 The Customer shall not:

- 10.3.1 create, or allow to be created over the Rental Goods any lien, charge or other security;
  - 10.3.2 lend, lease, sell or otherwise part with possession of the Rental Goods or represent it may do any of those things;
  - 10.3.3 do anything that causes the insurance of the Rental Goods to become void or voidable.
- 10.4 The Customer shall:
- 10.4.1 store the Rental Goods separately from all other material in the Customer's possession;
  - 10.4.2 ensure that the Rental Goods are clearly identifiable as belonging to the Supplier;
  - 10.4.3 not remove or alter any identifying mark on the Rental Goods; and
  - 10.4.4 inform the Supplier immediately if it becomes or is reasonably likely to become subject to any of the events or circumstances set out in clause 10.3.
- 10.5 The Supplier may inspect the Rental Goods during Working Hours and the Customer shall permit it access to its premises to do so.
- 10.6 At the end of the Contract the Customer shall deliver up the Rental Goods, serviced and maintained and in good repair and working order.

## **11 Insurance of the Rental Goods**

The Customer shall be responsible for insuring the Rental Goods from the date of delivery (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their full replacement value (iv) noting the Supplier's interest on the policy;.

## **12 Warranty**

- 12.1 The Supplier warrants that, at the time of performance, the Deliverables shall:
- 12.1.1 conform in all material respects to any sample, their description and to the Quotation;
  - 12.1.2 be free from material defects in design, material and workmanship;
  - 12.1.3 if Goods, be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
  - 12.1.4 if Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II, s 13; and
  - 12.1.5 any media on which the results of the Services are supplied shall be free from defects in material and workmanship and of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 12.2 As the Customer's sole and exclusive remedy, the Supplier shall, at its option, correct, repair, remedy, re-perform or refund the Deliverables that do not comply with clause 12, provided that the Customer:

- 12.2.1 serves a written notice on Supplier not later than seven Business Days from delivery or performance in the case of defects discoverable by a physical inspection, or within a reasonable period of time from delivery or performance in the case of latent defects;
  - 12.2.2 such notice specifies that some or all of the Deliverables do not comply with clause 12.1 and identifying in sufficient detail the nature and extent of the defects; and
  - 12.2.3 gives the Supplier a reasonable opportunity to examine the claim of the defective Deliverables.
- 12.3 The provisions of these Conditions shall apply to any Deliverables that are corrected, repaired, remedied or re-performed with effect from delivery or performance of those Deliverables.
- 12.4 The Supplier shall not be liable for any failure of the Goods to comply with clause 12.1:
- 12.4.1 where such failure arises by reason of wear and tear, wilful damage, negligence, or could be expected to arise in the normal course of use of the Goods;
  - 12.4.2 to the extent caused by the Customer's failure to comply with the Supplier's instructions in relation to the Goods, including any instructions on installation, operation, storage or maintenance.
  - 12.4.3 [to the extent caused by the Supplier following any specification, instruction or requirement of or given by the Customer in relation to the Goods;
  - 12.4.4 where the Customer modifies any Goods without the Supplier's prior written consent or, having received such consent, not in accordance with the Supplier's instructions;
  - 12.4.5 where the Customer uses any of the Goods after notifying the Supplier that they do not comply with clause 12.1;
  - 12.4.6 where the Deliverables are bypassed, compromised, neutralised or otherwise rendered inoperative by trespassers, intruders, the Customer or the Customer's employees or representatives or any other unauthorised persons or in the event of Force Majeure or by any other event outside the Supplier's control; or
  - 12.4.7 where the Customer has failed to pay any part of the Price by the due date for payment
- 12.5 Except as set out in this clause 12:
- 12.5.1 the Supplier gives no warranty and makes no representations in relation to the Deliverables; and
  - 12.5.2 shall have no liability for their failure to comply with the warranty in clause 12.1,
- and all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982 and ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted.

### **13 Anti-bribery**

- 13.1 For the purposes of this clause 13 the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 13.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:
- 13.2.1 all of that party's personnel;
- 13.2.2 all others associated with that party; and
- 13.2.3 all of that party's subcontractors;
- involved in performing the Contract so comply.
- 13.3 Without limitation to clause 13.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 13.4 The Customer shall immediately notify the Supplier as soon as it becomes aware of a breach or possible breach by the Customer of any of the requirements in this clause 13.
- 13.5 Any breach of this clause 13 by the Customer shall be deemed a material breach of the Contract that is not remediable and shall entitle the Supplier to immediately terminate the Contract by notice under clause 20.1.1.

### **14 Anti-slavery**

- 14.1 The Supplier shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy.
- 14.2 The Customer confirms and agrees that:
- 14.2.1 neither the Customer nor any of its officers, employees, agents or subcontractors has:
- (a) committed an offence under the Modern Slavery Act 2015 (an **MSA Offence**); or
  - (b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
  - (c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- 14.2.2 it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy;
- 14.2.3 it has implemented due diligence procedures to ensure compliance with the Modern Slavery Act 2015 and the Modern Slavery Policy in its business and supply chain, and those of its officers, employees, agents or subcontractors, which will be made available to the Supplier on request at any time throughout the Contract;

14.3 The Customer shall notify the Supplier immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Customer's obligations under clause 14.2. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Customer's obligations.

## **15 Indemnity and insurance**

15.1 The Customer shall indemnify, and keep indemnified, the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier as a result of or in connection with the Customer's breach of any of the Customer's obligations under the Contract.

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

## **16 Limitation of liability**

16.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 16.

16.2 Subject to clauses 16.5 and 16.6, in the event that the Supplier is found liable to the Customer for failure to provide the Deliverables, the Supplier's total liability shall not exceed the excess cost to the Customer of obtaining the Deliverables from a third party supplier at the best price that can be reasonably obtained.

16.3 Subject to clauses 16.5 and 16.6, the Supplier shall not be liable for consequential, indirect or special losses.

16.4 Subject to clauses 16.5 and 16.6, the Supplier shall not be liable for any of the following (whether direct or indirect):

16.4.1 loss of profit;

16.4.2 loss of measurable goods;

16.4.3 loss or corruption of data;

16.4.4 loss of use;

16.4.5 loss of production;

16.4.6 loss of contract;

16.4.7 loss of opportunity;

16.4.8 loss of savings, discount or rebate (whether actual or anticipated)

16.4.9 harm to reputation or loss of goodwill.

- 16.5 The limitations of liability set out in clauses 16.2 to 16.4 shall not apply in respect of any indemnities given by the Customer under the Contract.
- 16.6 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 16.6.1 death or personal injury caused by negligence;
  - 16.6.2 fraud or fraudulent misrepresentation;
  - 16.6.3 any other losses which cannot be excluded or limited by Applicable Law;
  - 16.6.4 any losses caused by wilful misconduct.

## **17 Confidentiality and announcements**

- 17.1 The Customer shall keep confidential all Confidential Information of the Supplier and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 17.1.1 any information which was in the public domain at the date of the Contract;
  - 17.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
  - 17.1.3 any information which is independently developed by the Customer without using information supplied by the Supplier; or
  - 17.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- except that the provisions of clauses 17.1.1 to 17.1.3 shall not apply to information to which clause 17.3 relates.
- 17.2 This clause shall remain in force for a period of five years from the date of the Contract and, if longer, three years after termination of the Contract.
- 17.3 To the extent any Confidential Information is Protected Data such Confidential Information may be disclosed or used only to the extent such disclosure or use is in compliance with and does not conflict with any provisions of clause 18.

## **18 Processing of personal data**

- 18.1 The parties agree that the Customer is a Controller and that the Supplier is a Processor for the purposes of processing Protected Data pursuant to the Contract. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to the Supplier in respect of Protected Data (including the terms of the Contract) shall at all times be in accordance with Data Protection Laws. Nothing in the Contract relieves the Customer of any responsibilities or liabilities under any Data Protection Laws.
- 18.2 The Supplier shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of the Contract.



- 18.3 The Customer shall indemnify and keep indemnified the Supplier against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a Data Protection Supervisory Authority) arising out of or in connection with any breach by the Customer of its obligations under this clause 18.
- 18.4 The Supplier shall:
- 18.4.1 only process (and shall ensure Supplier Personnel only process) the Protected Data in accordance with the schedule and the Contract (including when making any transfer to which clause 18.8 relates), except to the extent:
- (a) that alternative processing instructions are agreed between the parties in writing; or
  - (b) otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest); and
- 18.4.2 without prejudice to clause 18.1, if the Supplier believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.
- 18.5 Taking into account the state of technical development and the nature of processing, the Supplier shall implement and maintain the technical and organisational measures set out in Part B of the schedule to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.
- 18.6 The Supplier shall:
- 18.6.1 not permit any processing of Protected Data by any agent, subcontractor or other third party (except its or its Sub-Processors' own employees in the course of their employment that are subject to an enforceable obligation of confidence with regards to the Protected Data) without the written authorisation of the Customer;
- 18.6.2 prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this clause 18 (including those relating to sufficient guarantees to implement appropriate technical and organisational measures) that is enforceable by the Supplier and ensure each such Sub-Processor complies with all such obligations;
- 18.6.3 remain fully liable to the Customer under the Contract for all the acts and omissions of each Sub-Processor as if they were its own; and
- 18.6.4 ensure that all persons authorised by the Supplier or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.
- 18.7 The Supplier shall (at the Customer's cost):
- 18.7.1 assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data

Protection Laws) taking into account the nature of the processing and the information available to the Supplier; and

- 18.7.2 taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.
- 18.8 The Supplier shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the United Kingdom or to any International Organisation without the prior written authorisation of the Customer.
- 18.9 The Supplier shall, in accordance with Data Protection Laws, make available to the Customer such information that is in its possession or control as is necessary to demonstrate the Supplier's compliance with the obligations placed on it under this clause 18 and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of one audit request in any 12 month period under this clause 18.9).
- 18.10 On the end of the provision of the Services relating to the processing of Protected Data, at the Customer's cost and the Customer's option, the Supplier shall either return all of the Protected Data to the Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires the Supplier to store such Protected Data. This clause 18 shall survive termination or expiry of the Contract.

## **19 Force majeure**

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues for a continuous period of more than 60 days, either party may terminate the Contract by written notice to the other party.

## **20 Termination**

- 20.1 The Supplier may terminate the Contract or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if:
- 20.1.1 the Customer commits a material breach of the Contract and such breach is not remediable;
- 20.1.2 the Customer commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach;
- 20.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after the Supplier has given notification that the payment is overdue; or

- 20.1.4 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 20.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
- 20.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
  - 20.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;
  - 20.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
  - 20.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
  - 20.2.5 has a resolution passed for its winding up;
  - 20.2.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
  - 20.2.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
  - 20.2.8 has a freezing order made against it;
  - 20.2.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items;
  - 20.2.10 is subject to any events or circumstances analogous to those in clauses 20.2.1 to 20.2.9 in any jurisdiction;
  - 20.2.11 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 20.2.1 to 20.2.10 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 20.3 The Supplier may terminate the Contract at any time by giving not less than four weeks' notice in writing to the Customer if the Customer undergoes a change of Control.
- 20.4 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under this clause 20, it shall immediately notify the Supplier in writing.
- 20.5 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.

## **21 Notices**

21.1 Any notice given by a party under these Conditions shall:

21.1.1 be in writing and in English;

21.1.2 be signed by, or on behalf of, the party giving it; and

21.1.3 be sent to the relevant party at the address set out in the Contract

21.2 Notices may be given, and are deemed received:

21.2.1 by hand: on receipt of a signature at the time of delivery;

21.2.2 by post: at 9.00 am on the second Business Day after posting;

21.2.3 by email on receipt of a read receipt email from the correct address.

21.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 21.1 and shall be effective:

21.3.1 on the date specified in the notice as being the date of such change; or

21.3.2 if no date is so specified, 2 Business Days after the notice is deemed to be received.

21.4 All references to time are to the local time at the place of deemed receipt.

21.5 This clause does not apply to notices given in legal proceedings or arbitration.

## **22 Cumulative remedies**

The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.

## **23 Time**

Unless stated otherwise, time is of the essence for any date or period specified in the Contract in relation to the Customer's obligations only.

## **24 Further assurance**

The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

## **25 Entire agreement**

25.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

25.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into

pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

25.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

## **26 Variation**

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, each party.

## **27 Assignment**

27.1 The Customer may not assign, subcontract or otherwise dispose of right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent.

27.2 The Supplier will be entitled to assign, subcontract or encumber any right or obligation under the Contract and/or to delegate, sub-contract or outsource any or all of the Services.

## **28 Set off**

28.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which the Supplier has with the Customer.

28.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

## **29 No partnership or agency**

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

## **30 Equitable relief**

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

## **31 Severance**

31.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

31.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and

enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

### **32 Waiver**

- 32.1 No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 32.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.

### **33 Compliance with law**

The Customer shall comply with Applicable Law and shall maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

### **34 Conflicts within contract**

If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions and of A and B of the schedule shall prevail to the extent of the conflict.

### **35 Third party rights**

A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

### **36 Governing law**

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

### **37 Jurisdiction**

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

## THE SCHEDULE

### **Part A**

#### **Data processing details**

Processing of the Protected Data by the Supplier under the Contract shall be for the subject-matter, duration, nature and purposes and involve the types of Personal Data and categories of Data Subjects set out in this Part A of the schedule.

#### **Subject-matter of processing:**

The transactions regarding sales or proposed sales or provision or proposed provision of services to purchasers

#### **Duration of the processing:**

The duration of the contractual relations or proposed contractual relations between the parties

#### **Nature and purpose of the processing:**

For the purposes of the Supplier providing services or goods to the Customer or for the purposes of discussions regarding services or goods that may be provided

#### **Type of Personal Data:**

Names, email addresses, addresses and telephone numbers

#### **Categories of Data Subjects:**

Customers, prospective customers, employees and contractors of customers and prospective customers

### **Part B**

#### **Technical and organisational security measures**

The Supplier shall implement and maintain the following technical and organisational security measures to protect the Protected Data:

In accordance with the Data Protection Laws, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the Protected Data to be carried out under or in connection with the Contract, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Protected Data transmitted, stored or otherwise processed, the Supplier shall implement appropriate technical and organisational security measures appropriate to the risk, including as appropriate those matters mentioned in Articles 32(1)(a) to 32(1)(d) (inclusive) of the GDPR.

**The terms and conditions which apply to and govern this Order are the Conditions. The parties agree that all other terms and conditions are expressly excluded.**

**The Customer has read and accepts the Order and Contract subject to the Conditions above.**