

HERIOT-WATT UNIVERSITY
GENERAL TERMS AND CONDITIONS OF CONTRACT FOR THE PROVISION OF GOODS AND SERVICES

1. ENTIRE AGREEMENT

- 1.1. These terms and conditions apply in preference to and supersede any terms and conditions referred to, offered or relied on by the Seller at any stage in the dealings between the Buyer and the Seller with reference to the Goods and Services and the Installation to which the Contract relates. Without prejudice to the generality of the aforementioned, the Buyer will not be bound by any standard or printed terms referred to or furnished by the Seller in any of its documents. In this context, quotations referred to in the Contract are generally referenced for delivery and quantity detail only, but may, in the absence of any other references to documentation in the Contract, also be referenced for the purposes of specifying the Goods and/or Services and/or the Installation to be supplied under the provisions of the Contract. These terms and conditions also apply in preference to, and supersede, any terms and conditions which appear on, or are attached to, any Purchase Order issued by the Buyer and forming part of the Contract, which shall apply only in so far as they are not inconsistent with these General Conditions of Contract.
- 1.2. This Contract supersedes all previous agreements, arrangements and undertakings, express or implied between the Buyer and the Seller related to the subject matter of the Contract. No addition or modification of any provision of the Contract shall be binding upon the other party unless it is made in writing and duly signed by an authorised representative of each of the parties.

2. DEFINITIONS

- 2.1. 'Acceptance Certificate' has the meaning given in Clause 16.4.
- 2.2. 'Acceptance Date' shall mean the date of the Acceptance Certificate or, if there is no Acceptance Certificate, the date on which the Buyer has accepted the Goods and Services in accordance with Clauses 15 and 16.
- 2.3. 'Applicable Laws' means any laws, statutes, bye-laws, regulations, orders, regulatory policies, guidance or industry codes, rules of court or directives or requirements that are relevant to the performance of the Seller's obligations under the Contract.
- 2.4. 'Attachment' shall mean a document attached to these General Conditions of Contract and/or attached to or referred to in a Purchase Order.
- 2.5. 'Authorised' shall mean the signature of an authorised representative of the Buyer who is either named on the face of the Purchase Order, and/or in the Award Letter and/or notified to the Seller by the Buyer as being an authorised representative.
- 2.6. 'Award Letter' shall mean the decision letter issued by the Buyer to the Seller at the conclusion of the procurement process to confirm the outcome of such process and the Buyer's intention to enter into a Contract with the Seller for the provision of Goods and Services.
- 2.7. 'Best Industry Practice' shall mean the standards which fall within the upper quartile in the relevant industry for the provision of goods or services which are substantially similar to the Goods or Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the term, efficiencies, the pricing structure and any other relevant factors of the Contract.
- 2.8. 'Buyer' shall mean Heriot-Watt University or any wholly owned or associated subsidiary thereof named in the Award Letter and/or on the Purchase Order.
- 2.9. 'Completion Date' shall mean the date specified on the Purchase Order, or in any Attachment, for the completion of the Delivery, and/or where applicable, the date by which it is intended that the Acceptance Certificate will be signed by the Buyer.

- 2.10. 'Contract' shall mean the legally binding arrangement made between the Buyer and the Seller. The Contract is made between the Buyer and the Seller when the Award Letter has been signed by authorised representatives of each of the parties and the second signing party has returned the Award Letter to the other party.
- 2.11. 'Delivery' shall mean the delivery (including off loading and setting in the designated place) of the Goods and/or the provision of the Services; and 'Deliver' shall be interpreted accordingly. 'Delivery' shall not under any circumstances imply acceptance of the Goods and/or Services.
- 2.12. 'DP Laws' means (i) Applicable Laws that apply from time to time in any territory in which either party Processes Personal Data, including without limitation the General Data Protection Regulation (EU) 2016/679 (the '**EU GDPR**') and the e-Privacy Directive and relevant member state laws in the European Economic Area ('**EEA**') and in relation to the United Kingdom the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003 (amended by SI 2011 no. 6) and the EU GDPR (as incorporated into UK law under the UK European Union (Withdrawal) Act 2018) as the same are amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586), as amended, to be referred to as '**PECR**', '**DPA 2018**' and the '**UK GDPR**' respectively, as the same are amended, consolidated, modified, re-enacted or replaced from time to time; (ii) any code of practice or guidance published by a regulatory body from time to time; and/or (iii) any binding pronouncements (including findings, orders, decisions and/or judgements) issued by a regulatory body or a court.
- 2.13. 'Fixed Price' shall mean no variation of the Price nor reconciliation of costs is permitted.
- 2.14. 'Good Industry Practice' shall mean all relevant practices and professional standards that would reasonably be expected of a well-managed business performing services substantially similar to the Services (taking into account factors such as service levels, term and pricing), to customers of the same nature and size as the Buyer.
- 2.15. 'Goods' and 'Services' shall mean the goods and services respectively which are to be supplied by the Seller to the Buyer under the Contract.
- 2.16. 'Installation' shall mean the installation of the Goods in the location and into the operating environment specified by the Buyer; and 'Install' shall be interpreted accordingly.
- 2.17. 'Intellectual Property Rights' shall mean patents, copyright, registered and unregistered design rights, utility models, trade marks (whether or not registered), database rights, rights in know-how and confidential information and all other intellectual and industrial property rights and similar or analogous rights existing under the laws of any country, and all rights to apply for or register such rights.
- 2.18. 'Manufacturer' shall mean the original manufacturer of the Goods or the person who attaches its brand to the Goods.
- 2.19. 'Packaging' includes bags, cases, carboys, cylinders, drums, pallets, tank wagons and other containers.
- 2.20. 'Personnel' shall mean all personnel employed by the Seller (and including the personnel of any agent or sub-contractor of the Seller) for the purpose of performing the Contract. As set out in Clause 43.2, all such Personnel must be fully trained, suitably qualified and experienced, and shall fulfil their duties in a professional, ethical manner, consistent with the Buyer's commitment to equal opportunities and race equality and the highest standards of behaviour.
- 2.21. 'Price' shall mean the agreed price of the Goods and Services as set out on the Purchase Order and/or in the Attachment, excluding discounts and VAT.
- 2.22. 'Purchase Order' shall mean the Buyer's purchase order form which details the instructions to the Seller.

- 2.23. 'Site' shall mean the location(s) for the Delivery and Installation, as specified in the Purchase Order or otherwise notified in writing by the Buyer.
- 2.24. 'Seller' shall mean the person, firm, or company to whom the Purchase Order is addressed.
- 2.25. 'Specification' shall mean any technical specification for the Goods or Services contained and/or referenced on the Purchase Order; in an Attachment and/or referenced in the Award Letter, or any combination of the foregoing.
- 2.26. 'Variation' shall mean any variation to the Contract confirmed by an Authorised Purchase Order carrying the words 'Purchase Order Amendment Number' and/or by the issue of an instruction to vary the Contract in accordance with Clause 13.
- 2.27. 'Warranty Period' shall mean the period applicable to the Goods and Services as defined in Clause 26.2.
- 2.28. 'Warranty Services' shall mean such maintenance, repair and other services that are required to be provided in order to reinstate the Goods and/or the Installation or any part thereof to the standards of performance, and/or provided the Services to standards, that are in accordance with, and as detailed in the Contract.
- 2.29. 'Working Days' means any day other than a Saturday or Sunday, but excluding 1st and 2nd January and 25th and 26th December of each year.

3. AUTHORITY AND COMPLIANCE WITH LAWS

- 3.1. The Buyer shall not be liable for any Purchase Order, Variation, letter of intent, or instructions to proceed with a Purchase Order unless and until it has been Authorised.
- 3.2. The Seller shall perform its obligations under the Contract (including those in relation to the Goods and Services) in accordance with all Applicable Laws.

4. PRICES

- 4.1. Unless specifically agreed in the Contract all prices shall be in UK Pounds Sterling and shall be Fixed Prices for the duration of the Contract, inclusive of all costs, including, without limitation, carriage, packaging and certification (where required), but exclusive of VAT. Prices shall be deemed to be exclusive of any tax, levies or duty unless otherwise specified on the face of the relevant Purchase Order.

5. SELLER TO INFORM ITSELF FULLY

- 5.1. The Seller shall be deemed to have examined the Specification and these General Conditions of Contract. No claims from the Seller for additional payment will be allowed on the grounds of misinterpretation of the Specification (whether it was prepared by the Buyer or by the Seller) or these General Conditions of Contract if the Seller could reasonably have sought clarification from the Buyer prior to the issue of the Purchase Order.

6. THE INSTALLATION SITE

- 6.1. Unless otherwise specified in an Attachment and/or otherwise agreed in writing and/or stated on the face of the Purchase Order, the Seller shall be required to undertake a visit to the Site (and, where such visit is required, shall be deemed to have undertaken and completed a visit to the Site), and shall: -
- 6.1.1. issue a report detailing work to be carried out to prepare the Site for the Delivery and/or Installation; or

- 6.1.2. issue a certificate, stating that the Site is suitable and acceptable for the Delivery and/or Installation to commence; and
 - 6.1.3. include in the report and/or certificate confirmation that the Site conditions, layout and design and/or other provisions related to the Site are suitable and such that the Seller can Deliver and set in the designated place the Goods or notify the Buyer of any work or requirements that need to be completed in order that the Seller is able to gain access to and undertake Delivery of the Goods to, and at, the Site. If the Seller does not notify the Buyer of any such work or requirements, the Seller shall be deemed to have accepted that the Site is suitable and shall proceed with the Delivery.
- 6.2. The report issued by the Seller in accordance with Clause 6.1.1 above must supply adequate information in sufficient time to enable the Buyer to prepare the Site for the Installation, and enable the Buyer to provide: -
 - 6.2.1. a suitable supply of electric current and such other mains services as maybe required;
 - 6.2.2. all other required electrical and mechanical items and fittings, as specified by the Seller at the time of awarding the Contract and agreed by the Buyer (other than the Goods);
 - 6.2.3. such facilities and environmental conditions as defined on the Purchase Order and/or in any Attachment; and
 - 6.2.4. access to, and egress from, the Site and/or the designated place for the Delivery and Installation of the Goods to enable the Delivery, off-loading and placing in position of the Goods (including, without limitation, appropriate access and egress that enables the Seller to deliver and remove any equipment, tooling or other facilities required for the purposes of undertaking and completing the Delivery and Installation of the Goods) which complies with any specific requirements set out in the report referred to above.
- 6.3. In circumstances where the Seller issues a report in accordance with Clause 6.1.1, the Seller shall be required to re-examine the Site upon the notification by the Buyer that any work specified in the report has been completed and issue a certificate in accordance with Clause 6.1.2, or apply the provisions of Clause 6.1.1 as appropriate.
- 6.4. The Buyer at its own expense shall ensure that such preparations and provisions in writing made known to the Buyer by the Seller are made such that the Seller is able to Deliver the Goods and/or Services on the date specified for Delivery and Installation on the Purchase Order and/or in any Programme of Delivery and/or Installation contained in any Attachment. In the event that such preparation and provision are unsuitable for the purpose of the Installation as the result of an act or default of one party, then any costs which the other party can demonstrate as being reasonably and necessarily incurred as a direct result of that act or default shall be recoverable from the defaulting party.

7. ACCESS

- 7.1. The Buyer shall afford to the authorised Personnel at all reasonable times and with prior agreement, such access to the Site, (but not necessarily sole access) as may be necessary for the inspection of the Site and for the execution of Delivery and Installation, providing always that the Buyer shall have the right to refuse to admit to, or order the removal from, the Site of any person employed by, or acting on behalf of, the Seller, or any authorised sub-contractor who, in the opinion of the Buyer (which shall be final), is not a fit and proper person to be on the Site. Action under this Clause shall not relieve the Seller of any of its obligations under the Contract.
- 7.2. The Seller must take reasonable care to ensure that, in the execution of the Delivery and Installation, they do not interfere with the operations of the Buyer, its employees or any other contractor employed on the Site.
- 7.3. The Seller may work on the Site only with the permission of the Buyer.

- 7.4. The Seller shall, without prejudice to any other obligations to the Buyer with regard to access to the Site: -
- 7.4.1. comply at all times with its statutory obligations in respect of Health and Safety at Work and the Buyer's policies, procedures and/or reasonable instructions in respect of Health and Safety;
 - 7.4.2. comply with any policies, procedures and/or reasonable instructions of the Buyer with regard to security when attempting to gain access to and egress from, and at all times when working on, the Site;
 - 7.4.3. comply with any policies, procedures and/or instructions of the Buyer in respect of the use of any services and/or facilities to be provided by the Buyer in accordance with the Contract and/or as may otherwise be reasonably required in order that the Seller is able to meet its obligations under the Contract;
 - 7.4.4. comply with any policies, procedures and/or instructions of the Buyer in respect of the Site and/or any other of the Buyer's sites to which the Seller may have access for any purpose;
 - 7.4.5. ensure that any Installation and/or other Services which require the attendance of the Seller on the Site be undertaken during the Buyer's standard operational hours unless otherwise agreed by the Buyer; and
 - 7.4.6. leave the Goods and the Site in a clean and tidy condition at the end of each visit and upon completion of the Installation.
- 7.5. The Seller shall ensure that all Personnel shall comply with its obligations set out in Clauses 7.1 to 7.4 inclusive above.

8. QUALITY

- 8.1. The Goods and/or Services and/or the Installation supplied and/or provided in accordance with the Contract shall: -
- 8.1.1. conform in every respect with provision of the Contract;
 - 8.1.2. be capable of fulfilling and maintaining all standards of performance specified in the Contract;
 - 8.1.3. be fit for any purpose made known to the Seller expressly and by implication, and in this respect the Seller accepts that the Buyer has relied, and shall continue to rely, on the Seller's skill and judgement;
 - 8.1.4. correspond with the Specification;
 - 8.1.5. correspond with any samples, patterns, drawings and/or plans referred to in the Contract;
 - 8.1.6. be of satisfactory quality;
 - 8.1.7. be new (unless otherwise stated on the Purchase Order that Goods are not new, but second hand and used), but in any event, whether the Goods are new or otherwise, the Goods and/or the Installation and any parts thereof shall be of good construction, sound materially, of adequate strength and free of defects in design, materials and workmanship; and
 - 8.1.8. be compliant with the express terms of the Contract and implied conditions, warranties and terms contained in the Sale of Goods Act 1979, and/or the Supply of Goods and

Services Act 1982, as amended by any related statutes, and any statutory re - enactment(s) or modifications thereof.

- 8.2. Without prejudice to the provisions of Clause 8.1 the Goods and/or Services and/or the Installation shall comply with all appropriate UK legislation, regulations or other mandatory standards applicable and relevant to the Goods and/or Services at the date of the Contract (in which case all Goods supplied must be clearly endorsed as being fully compliant as set out above by the application of the UK Conformity Assessed (UKCA) marking in a position on the Goods which meets the requirements of the UKCA regime and/or the Seller shall be obliged to provide copies of relevant test or other certification in respect of the Goods and/or Services at the request of the Buyer) and/or with any specification of the British Standards Institution (or equivalent, including UK, European, or international standards as may be applicable) which is relevant to the Goods and Services at the date of the Contract.

9. STANDARDS OF THE INSTALLATION

- 9.1. The work required of the Seller to complete Installation shall be as defined on the Purchase Order and/or in any Attachment.
- 9.2. Without reducing the scope of any obligations imposed on the Seller by the terms of the Contract with regard to the standard of the Installation, the Seller shall use good quality materials, techniques and standards to execute the Installation with the care, skill and diligence required in accordance with the Best Industry Practice.

10. MISTAKES IN INFORMATION

- 10.1. The Seller shall be responsible for and shall pay any extra costs occasioned by any discrepancies, errors or omissions in drawings, documentation or other information supplied in writing by the Seller whether or not approved by the Buyer, provided that such discrepancies, errors or omissions are not due to inaccurate drawings or information and decisions supplied in writing to the Seller by the Buyer.
- 10.2. The Buyer shall be responsible for, and shall pay any additional costs which the Seller can demonstrate as being reasonably and necessarily incurred as a direct result of the Seller acting upon any discrepancies, errors or omissions in any drawings, information and decisions supplied in writing to the Seller, by the Buyer. Any claims under this Clause must be made in writing, and will only be paid if accepted by the Buyer by means of the issue of a Variation.

11. PROGRAMME OF DELIVERY AND/OR PROGRAMME OF INSTALLATION

- 11.1. The Delivery and/or Installation shall be carried out in accordance with any timetable, or before any date, specified in the Purchase Order or in any Attachment.

12. PACKAGING, MARKING AND DELIVERY

- 12.1. All Goods must be adequately protected against damage and deterioration in transit and delivered, carriage paid. Any information related to the handling and storage of goods upon receipt must be clearly marked on the packaging and accompanying paperwork. The Goods shall be at the Seller's risk until Delivered to the Buyer. Unless otherwise agreed the Seller will collect and dispose of all Packaging at no cost to the Buyer.
- 12.2. No Deliveries shall be made to the Site without the prior permission of the Buyer, and the Seller will seek that permission at least two (2) Working Days before the intended delivery time.
- 12.3. The Seller shall provide all necessary labour, materials and plant required for the Delivery and Installation. Any costs or charges associated with Delivery and/or Installation shall form part of the Price.
- 12.4. The Goods shall be transported and off-loaded at the sole risk and expense of the Seller. The Seller shall be responsible for the safe custody of any equipment (not being the Goods) which is the property of the Seller whilst it is held on the Buyer's property until the Acceptance Date, after

which the Seller shall remove such equipment leaving the Site and premises in a clean and tidy condition. For the avoidance of doubt, any goods and/or equipment (not being the Goods) which are the property of the Seller shall be held on the Site at the sole risk of the Seller. The Buyer shall not be liable for any loss or damage to equipment as aforesaid howsoever caused, and shall have the right to charge for storage of the equipment in the event that the Seller fails to remove their equipment from Site within a reasonable period of time following Delivery.

13. VARIATIONS

- 13.1. Neither party shall alter any part of the Contract without the prior written agreement of the other party, such agreement in the case of Variations requested by the Buyer shall not be unreasonably withheld, denied or delayed by the Seller. Variations so requested by either party from time to time during the execution of the Contract and/or during the period of the Contract shall, once agreed, be confirmed by the issue of a written Variation to the Contract. The Seller shall carry out such Variations and the parties shall be bound by the same conditions as set out in the Contract, so far as they may be applicable, as though the said Variations were stated in the Contract.
- 13.2. Without prejudice to the foregoing, if a Variation is required by either party, the other party shall state in writing the effect such Variation shall or is expected to have on the Delivery and/or Installation of, and/or the Programme of Delivery and/or Installation for, the Goods and/or the provision of the Services and what adjustment, if any, will be required to the Price and/or Completion Date.

14. DELAYS BY THE SELLER

- 14.1. Any time or period for Delivery, despatch, Installation and/or completion shall be the essence of the Contract. If the Seller fails to complete: -

- 14.1.1. any specific part or stage of the Installation by the date(s) specified in the Purchase Order, an Attachment or a Variation;
- 14.1.2. the Delivery and/or Installation of the Goods and/or Services by the Completion Date (or such revised dates as may be agreed in accordance with Clause 13),

the Buyer shall have the right exercisable by giving notice to the Seller, at its sole discretion, either to: -

- (a) cancel the Contract whereupon the Buyer's rights shall be as described in Clause 17 hereof; or
- (b) proceed with the fulfilment of the Contract whereupon the Buyer shall have the right to recover from the Seller any losses which it may have suffered as set out in Clause 14.2 hereof.
- 14.2. In the event that the Buyer shall elect to proceed with the fulfilment of the Contract despite late completion, and the Buyer shall have suffered a loss, then without prejudice to any of the Buyer's other rights and remedies, the Buyer shall have the right to deduct, as liquidated damages and not by way of a penalty, from the Price the percentage stated in the Purchase Order and/or in any Attachment, of the Price for each week or part thereof between the Completion Date and the Acceptance Date.
- 14.3. The amount so deducted under Clause 14.2 shall not exceed the maximum percentage of the total Price stated in the Purchase Order and/or in any Attachment and such deductions so made are a pre-estimate of the loss likely to be suffered by the Buyer as a result of the failure of the Seller to meet the Completion Date.

15. ACCEPTANCE TESTS

- 15.1. The Seller shall be required to undertake Acceptance Tests as detailed on the Purchase Order and/or in any Attachment.

- 15.2. Where the details of the Acceptance Tests to be implemented in accordance with this Contract are not specified in the Purchase Order or in any Attachment, the Acceptance Tests to be administered shall be defined (in the case of Goods) as those procedures published by the Manufacturer, or, where no such procedures are published and in the case of Services, the Acceptance Tests shall be those which are generally accepted as enabling the Buyer to satisfy itself that the Goods and/or Services or specific part thereof have been Delivered and/or Installed such that they are in accordance with the Contract.
- 15.3. Where Goods are intended to be utilised or integrated with, or to be deployed alongside and/or installed on or with goods, systems, software, platforms, or services not supplied by the Seller, including - without limitation- computer application software, cloud-based applications, third-party APIs, hardware, or operating environments, the Buyer shall have the right to require that Acceptance Tests are undertaken to verify the interoperability, compatibility, and proper functioning of the Goods in that combined environment.
- 15.4. The Seller shall give to the Buyer no less than seven (7) days written notice, or such shorter notice as may be agreed, of the date when it will be ready to commence Acceptance Tests.
- 15.5. Unless otherwise specified in the Contract, it shall be for the Seller to provide the necessary equipment, labour and things of all kinds to carry out the Acceptance Tests.
- 15.6. The Acceptance Tests shall take place on the dates specified in the Purchase Order or in any Attachment, or such dates as the Buyer shall notify to the Seller in writing, unless otherwise agreed.
- 15.7. If the Seller fails to make such tests within the time stipulated, the Buyer reserves the right to undertake the Acceptance Tests specified. All Acceptance Tests undertaken by the Buyer shall be at the risk and expense of the Seller, unless the Seller shall establish to the satisfaction of the Buyer that the tests were not being delayed, in which case such tests so made shall be at the risk and expense of the Buyer.
- 15.8. If the Goods and/or Services or any part or stage thereof fail to pass the Acceptance Tests, repeat tests shall be carried out within a reasonable time by the Seller. In the event that the Goods and/or Services or any part or stage thereof, are not in accordance with the Contract, then, without prejudice to the Buyer's rights under Clauses 14 & 17, the Buyer shall have the right to: -
- 15.8.1. require the Seller to supply, free of all charges, such additional or replacement goods and/or services as may be necessary to enable the Goods and/or Services to pass the Acceptance Tests;
- 15.8.2. accept and retain such of the Goods and/or Services as the Buyer may consider expedient at such reduced Price as may be agreed by the Buyer and the Seller;
- 15.8.3. contract with a third party to enable the Goods and/or Services to pass the Acceptance Tests. In such circumstances any costs incurred shall be for the Seller's account, and shall be deducted from any sums due under the Contract, or shall otherwise be recoverable from the Seller; or
- 15.8.4. reject the Goods and/or Services, where they are not in accordance with the Contract.

16. ACCEPTANCE

- 16.1. If the Goods or Services fail to conform with the Specification and/or the Contract, whether by reason of not being of the required quality, or fit for the purpose stipulated in the Specification, and whether the Goods and/or Services have been subjected to Acceptance Tests or otherwise, the Buyer shall without prejudice to its rights under Clauses 14, 17 and 26 of these General Conditions of Contract have the right to reject such Goods and/or Services within a reasonable time after Delivery and/or Installation. The Buyer shall be obliged to give the Seller reasonable opportunity to replace any rejected Goods and/or provide Services with Goods and/or Services which conform to the Specification and/or the Contract, but shall thereafter, without prejudice to any other right which the Buyer may have against the Seller, have the right to purchase such

Goods and/or Services of the same or substantially equal quality and/or Specification elsewhere. Any additional costs which may be incurred by the Buyer in purchasing such Goods and/or Services shall be for the Seller's account. When Goods are rejected they will be stored at the Site, and subsequently returned, at the Seller's sole risk and expense.

- 16.2. Neither Delivery nor Installation nor putting into use constitutes acceptance of the Goods or Services by the Buyer.
- 16.3. The making of any payment due under the Contract shall not constitute acceptance and shall not prejudice the Buyer's rights of rejection.
- 16.4. Unless it is specified in the Purchase Order or any Attachment that an Acceptance Certificate is not required, then as soon as the Acceptance Tests appropriate to, or specified for, the Goods and/or Services have been completed and the Goods and/or Services have passed the Acceptance Tests, the Buyer shall issue a certificate which will state the Acceptance Date and any outstanding defects in the Installation or relevant part thereof (the 'Acceptance Certificate'). The Seller undertakes to rectify such defects immediately and without delay and, in any case, by a specific date, which shall be binding, and which shall be agreed in writing by the parties within seven (7) Working Days after the Acceptance Date. If the Seller fails to remedy such defects within the period specified and agreed, the Buyer's rights shall be as set out in Clauses 14 and 17.

17. CANCELLATION

- 17.1. The Buyer may terminate the Contract for reasons other than default on the part of the Seller by giving not less than thirty (30) calendar days written notice to the Seller. Provided that such termination is not due to any default of the Seller, the Buyer shall pay the Seller:
 - 17.1.1. for any work performed and/or Goods and/or Services provided to the date of issue of termination; and
 - 17.1.2. for any commitments, liabilities or expenditure properly, reasonably and necessarily entered into by the Seller for the sole and absolute purposes of the performance of the Contract to the extent to which the same would represent an unavoidable loss to the Seller (and which could, or can, not be reasonably avoided) as a direct result of the termination of the Contract.
- 17.2. The Buyer's liability under Clause 17.1 shall not under any circumstances exceed the Price excluding any maintenance charges, and the Seller shall be obliged to use all reasonable endeavours to mitigate the costs that it seeks to recover from the Buyer and maintain such costs at the lowest possible level.
- 17.3. Either party may terminate the Contract forthwith by written notice to the other party in the event that: -
 - 17.3.1. the other party is in breach (where breach shall, in the case of the Seller, be deemed to include, without limitation, a failure of the Seller to Deliver and/or Install Goods and/or provide Services which are in accordance with the terms of the Purchase Order; a failure of the Seller to make progress with the Contract; a failure of the Seller to provide adequate replacement Goods and/or adequate or satisfactory Services, having been given a reasonable opportunity to rectify or remedy the situation or any combination of the foregoing) of any of the terms of the Contract and/or the Conditions of the Contract, and fails to rectify such breach within thirty (30) calendar days of receipt of the said written notice specifying such breach; or
 - 17.3.2. the other party becomes bankrupt or insolvent, or has a receiving order made against it, or compounds with its creditors or, being a corporation, commences to be wound up or if the party attempts to carry on its business under a receiver for the benefit of any of its creditors; or
 - 17.3.3. the other party is the subject of a take-over by or merger with another company.

17.4. The Buyer may terminate the Contract forthwith if the Seller commits a breach of any of the provisions of Clause 41 (Corrupt Gifts and Payment of Commissions), Clause 43 (Equality & Diversity Opportunities), Clause 44 (Anti-Slavery and Human Trafficking).

17.5. The termination of the Contract for any reason shall not affect the rights of either party accrued up to the date of such termination, but the Buyer shall not be liable for any commitment which has not been fulfilled by the Seller upon the date of termination.

18. PATENTS AND OTHER RIGHTS

18.1. The Seller shall fully indemnify the Buyer against all actions, claims, demands, proceedings, damages, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights by the use or possession of the Goods and/or any product which is a tangible output of the Services subject to the following: -

18.1.1. the Buyer shall promptly notify the Seller in writing of any alleged infringement of which they have notice;

18.1.2. the Buyer must make no admissions without the Seller's consent; and

18.1.3. the Buyer, at the Seller's request and expense shall allow the Seller to conduct and/or settle all negotiations and litigation, and give the Seller all reasonable assistance. The costs incurred or recovered in such negotiations or litigation shall be for the Seller's account.

18.2. If at any time any allegation of infringement of any Intellectual Property Rights is made in respect of the Goods and/or Services or in the Seller's reasonable opinion is likely to be made, the Seller may, at its own expense, modify or replace the Goods and/or Services or any part(s) thereof, without detracting from or degrading the overall performance of the Goods and/or any product which is a tangible output of the Services, the Seller making good to the Buyer any loss of use during modification or replacement, so as to avoid the infringement. The provisions of Clause 13 shall then take effect as if the Buyer had requested a Variation save that the Seller shall not be entitled to any increase to the Price.

18.3. Where development forms part of the Contract, the Buyer will own any Intellectual Property Rights arising from such development and - in the case of rights which can be prospectively assigned - the Seller hereby assigns those rights to the Buyer. In the case of other rights the Seller agrees to assign them to the Buyer as and when they arise and agrees to do all acts and execute all documents reasonably required by the Buyer at the Buyer's expense to perfect its title to those rights or to enable their registration anywhere in the world.

18.4. The Seller shall treat all information provided by the Buyer as confidential and use such information only for purposes of performing the Contract or meeting its obligations under the Contract. Where drawings or other data are issued by the Buyer or are prepared for the Buyer by the Seller the Seller shall exercise proper custody and control and return/dispose of such in accordance with the Buyer's instructions. For the avoidance of doubt nothing in these General Conditions of Contract is intended to confer any Intellectual Property Rights in the drawings or data, and their creation constitutes development as set out in Clause 18.3.

19. SOFTWARE

19.1. The Seller shall be responsible for providing in accordance with the Contract, all software, firmware and associated documentation where: -

19.1.1. the Goods comprise of and/or include computer hardware; and/or

19.1.2. the software and associated documentation is necessary for the satisfactory operation of the Goods or the use of the Services; and/or

19.1.3. where the provision of such software and associated documentation is specified in the Purchase Order and/or in any Attachment.

- 19.2. For the purposes of clarification, any reference to 'software' in Clause 19.1 shall be deemed to include and apply to software delivered in object code or source code, software accessed as a service (including SaaS or PaaS) and software made available via API or other virtual environment), as well as to any firmware provided and/or to be provided under the provisions of the Contract.
- 19.3. Where the provision of the software is not subject to separate licence arrangements: -
- 19.3.1. the Seller hereby grants to the Buyer a perpetual right to use the software (whether modified as hereinafter provided or not) on the Goods or in conjunction with the Services as the case may be;
 - 19.3.2. the Seller will provide the software in both object code and source code;
 - 19.3.3. the Buyer shall in perpetuity have the right to modify or add to any of the software without reference or obligation to the Seller;
 - 19.3.4. all Intellectual Property Rights of the Seller in the software shall remain vested in the Seller;
 - 19.3.5. the Buyer shall have the Intellectual Property Rights in any modifications or additions made to the software, but shall in no case acquire the Intellectual Property Rights in the software itself;
 - 19.3.6. the Buyer shall not assign or sub-licence to any third party to have the use of the software, including any translation, compilation, adaptation, enhancement or any other version of the software, without the prior written consent of the Seller, but the Buyer shall have the right to transfer the software to a third party without reference to, or prior written consent of the Seller, in the event that the Buyer sells and/or transfers ownership of the Goods or any part of the Goods to a third party; and
 - 19.3.7. the Buyer shall only make so many copies of the software as are reasonably necessary for operational security and use.
- 19.4. Where the Seller provides third party software in accordance with the Contract or otherwise in order to enable them to meet their obligations under the Contract, the Seller shall either: -
- 19.4.1. procure for the Buyer a non-exclusive, fully paid up, perpetual and irrevocable licence to use the Software under a separate licence agreement; or
 - 19.4.2. grant to the Buyer a sub-licence to use the third party software under a separate licence agreement.
- 19.5. Where any part of the software is hosted, operated, or maintained on infrastructure not owned by the Buyer (including cloud-based systems), the Seller shall ensure that such delivery is provided in accordance with the Contract and that the Buyer receives an appropriate licence, access right, or service level agreement.
- 19.6. The Seller shall disclose all open-source components included in the software and warrants that their inclusion does not impose any obligation on the Buyer to disclose, distribute, or license its own software or modifications.
- 19.7. The Seller hereby warrants that:
- 19.7.1. they have the right to grant to the Buyer the rights in the software and any third party software as set out in these General Conditions of Contract; and
 - 19.7.2. the software shall (i) not contain any known viruses, malware, or harmful code, (ii) comply with industry-standard secure development practices, and (iii) comply with applicable data protection and privacy laws.

20. STANDARD OF PERFORMANCE

20.1. The Seller shall ensure, and undertakes to ensure that the Goods and/or the Installation maintains the standard of performance specified and/or achieved that are either: -

20.1.1. in the Manufacturer's published specification for the Goods; or

20.1.2. in the Specification; or

20.1.3. in the Purchase Order or in any Attachment; or

20.1.4. as demonstrated in the Acceptance Tests and accepted by the Buyer; or

20.1.5. any combination of the above,

for either the period of the maintenance contract if the Goods and/or the Installation are to be maintained by the Seller, or the Warranty Period if the Goods are not to be maintained by the Seller.

20.2. If the Buyer claims that the Goods and/or Services and/or Installation or any part thereof, are not achieving and maintaining the standard of performance specified in the Contract and the Seller wishes to dispute that claim, then, notwithstanding prior acceptance of the Goods and/or Services and/or Installation in accordance with Clauses 15 and 16 hereof, it shall be for the Seller to undertake at its own expense all necessary investigations to disprove the Buyer's claims, or to prove that such failure to maintain requisite standards is due directly to the fault or failure of the Buyer.

21. INDEMNITY & INSURANCE

21.1. The Seller will keep the Buyer fully indemnified in respect of: -

21.1.1. all loss and/or expense which results during proper use directly from defective materials, goods, workmanship or design supplied by the Seller. For these purposes the Seller will on request produce evidence of premium receipts for Product Liability Insurance coverage of not less than fifty million pounds sterling (£50,000,000) or as otherwise shown on the face of the Purchase Order and/or in any Attachment for any one, or series of claims that may arise; and

21.1.2. all loss and/or expenses and all actions, claims, demands, costs and expenses incurred by or made against the Buyer which arises from any Services provided and/or advice given or anything done or omitted to be done under the Contract by the Seller. For these purposes the Seller will on request produce evidence of premium receipts for Professional Indemnity Insurance coverage of not less than two million pounds sterling (£2,000,000) or as otherwise shown on the face of the Purchase Order and/or in any Attachment for any one, or series of claims that may arise; and

21.1.3. against all actions, claims, demands or costs in respect of the death or injury to any person arising from defective materials, Goods, workmanship or design, or by reason of the Seller's negligence, or any act or omission on the part of the Seller's employees, sub-contractors, or agents arising out of or in connection with the performance of the Contract;

21.1.4. any damage to or loss of the Buyer's property (including any materials, tools or patterns sent to the Seller for any purpose) arising out of or in connection with performance of the Contract. For these purposes the Seller will on request produce evidence of premium receipts for Public Liability Insurance coverage of not less than ten million pounds sterling (£10,000,000) or as otherwise shown on the face of the Purchase Order and/or in any Attachment for any one, or series of claims that may arise; and

21.1.5. breach of any Applicable Laws by the Seller or any of the Seller's Personnel in the performance of its obligations under the Contract.

22. LIMITATION OF LIABILITY

22.1. Subject to Clause 22.2, neither party shall be liable to the other party (whether in contract, delict (including negligence), breach of statutory duty, or otherwise) for indirect, special or consequential loss or damage.

22.2. Nothing in the Contract shall limit or exclude:

22.2.1. a party's liability for fraud or fraudulent misrepresentation;

22.2.2. a party's liability for death or personal injury caused by its negligence or that of its officers, agents, employees or subcontractors (as applicable);

22.2.3. the Seller's liability under the indemnities given by it under the Contract;

22.2.4. the Seller's liability for breach of the terms implied by Section 12 of the Sale of Goods Act 1979 or breach of the terms implied by Section 11A of the Supply of Goods and Services Act 1982; or

22.2.5. a party's liability for any loss which by Applicable Laws cannot be limited or excluded.

22.3. Subject to Clause 22.2, the Buyer's total aggregate liability arising under or in connection with the Contract (whether in contract, delict (including negligence), breach of statutory duty, or otherwise) including under any indemnity shall in no event exceed an amount equivalent to the total Price paid or properly invoiced and due to be paid under the Contract in the twelve (12) month period immediately preceding the event giving rise to the liability.

23. ASSIGNMENT AND SUB-CONTRACTING

23.1. The Seller shall not, without first obtaining the written consent of the Buyer sub-contract the Contract or any part thereof, or make any sub-contract with any person or persons for the execution of any part of the Contract, but the restrictions contained in this Clause shall not apply to the supply of materials or minor details, nor to any part of the Contract for which a sub-contractor is named in the Purchase Order or any Attachment.

23.2. In circumstances where the Buyer gives written consent to the Seller to assign or sub-contract specific parts of the Contract, such written consent shall not relieve the Seller from any liability or obligations under the Contract, and the Seller shall be responsible for the acts, defaults or neglects of their sub-contractor, their agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Seller. When requested by the Buyer the Seller will provide a copy of any sub-contract documentation at no charge.

23.3. The Buyer may by written notice to the Seller assign the benefits of the Contract, and if required by the Buyer, the Seller will execute any novation agreement necessary to transfer its obligations under the Contract.

24. PAYMENT

24.1. Provided the goods and/or services have been delivered, and/or accepted by the Buyer as being in accordance with the Contract, the Seller shall be entitled to claim payment of the Price or the relevant portion of the Price, stated in the Purchase Order or any attachment. Invoicing must occur promptly, in accordance with the timelines stated in the Purchase Order. Payment of undisputed invoices will be made by the Buyer no later than a period of thirty (30) calendar days from the date of receipt of the relevant invoice.

- 24.2. Value Added Tax, where applicable, must be shown separately on all invoices.
- 24.3. The Seller must obtain a valid Purchase Order from the Buyer prior to commencing any work in respect of the Goods and Services. The correct Purchase Order number must be clearly referenced on all consignments, package packing notes, invoices, monthly statements, and/or any related correspondence. The Buyer will not be liable to pay any invoices that do not contain reference to a valid Purchase Order number. Where the Seller fails to include the correct Purchase Order number on the relevant documents and invoices, payment may be delayed, but no prompt discount shall be forfeited by the Buyer.
- 24.4. Any payment made shall be without prejudice to the Buyer's rights, should the Goods or Services and/or Installation prove unsatisfactory or not in accordance with the Contract.
- 24.5. If at any time there shall be any defect due to the fault of the Seller in or affecting any part or portion of the Goods and/or the Installation and/or Services in respect of which such payment is claimed, the Buyer shall have the right to retain the whole of such payment, provided that in the event of such defect being of a minor character, and not such as to affect the use of the Goods and/or the Installation and/or Services, or the said part thereof for the purpose intended without serious risk, the Buyer shall not retain a greater sum than represents the cost of making good the said defect. Any sums retained by the Buyer under this Clause shall be paid to the Seller upon the said defect being made good, subject to the provisions of Clause 24.1 above.
- 24.6. In circumstances where the Buyer exercises its rights under the provisions of Clause 14 of these Conditions, and makes a claim in respect of the Delivery and/or the Installation or any part thereof being subject to a delay due to the fault of the Seller, the Buyer reserves the right to deduct the appropriate percentage of the Price as agreed and detailed on in the Purchase Order or any Attachment from the payment falling due upon the completion of the Delivery and/or Installation or specific part thereof.
- 24.7. Each invoice shall show the prices attributable to each item of Goods and Services and be in sufficient detail to enable the Buyer to identify and assess the amounts claimed. The Seller undertakes to supply such other particulars of costings as the Buyer may require and to permit these to be verified by inspection of books, accounts and other documents and records.
- 24.8. The Seller shall have the right to charge the Buyer interest on any invoices that are not in dispute and are overdue for payment. The rate of interest shall be 2% over the then current base lending rate of Barclays Bank Plc. The parties agree that the level of interest payable under this Clause 24.8 is a substantial contractual remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998. The Seller shall not suspend the supply of Goods or Services or any part thereof if any payment is overdue.

25. RECOVERY OF SUMS DUE

- 25.1. Whenever under a Contract any sum of money shall be recoverable from, or payable by, the Seller, the same may be deducted from any sum then due or which at any time thereafter may become due to the Seller under the Contract, or under any other contract with the Buyer. Exercise by the Buyer of their rights under this Clause, shall be without prejudice to any other rights or remedies available to the Buyer under the Contract.

26. WARRANTY

- 26.1. The Seller shall be responsible for making good at its own expense on the Site, and within the time scales specified in Clauses 26.4 and/or 26.5, any defect in or damage to any of the Goods and/or output of the Services provided as described in Clause 26.3 which may develop during the Warranty Period.
- 26.2. Where the Goods are to be utilised immediately, the Warranty Period shall be twelve (12) months from the Acceptance Date and otherwise the Warranty Period shall be eighteen (18) months from the Delivery Date.

- 26.3. Defects covered by this warranty include any failure of the Goods to comply with the Specification and/or fulfil the functions or meet the level of performance specified in the Contract and accepted by the Buyer by the issue of an Acceptance Certificate or otherwise, which arises from: -
- 26.3.1. defective materials, including software, firmware, workmanship or design (other than a design furnished or specified by the Buyer for which the Seller has disclaimed responsibility in writing within a reasonable time after the receipt of the Buyer's instructions); or,
- 26.3.2. any act or omission of the Seller done or omitted during the Warranty Period.
- 26.4. For the purposes of clarification, where the Goods and/or the Installation comprises, or includes as part of the provision, computer hardware, (or it is specified in the Attachment that the following provision shall apply, to the Goods and/or the Installation or any specific items of Goods and/or the Installation) in the event that the Goods and/or the Installation, or any part thereof, shall fail to fulfil the functions or meet the level of performance specified in the Contract within the period of thirty (30) elapsed calendar days from the date of Delivery and/or Acceptance, whichever is the later, the Seller shall, unless otherwise agreed in writing by the Buyer, be obliged to replace the Goods and/or the affected part of Installation with Goods and/or the part of Installation of the same or substantially equal quality without degrading the functional and/or performance specifications and/or standards of the Goods and/or the Installation within a period of two (2) Working Days of the receipt of the Buyer's notification of the fault or failure. Such obligation shall be without prejudice to any other rights that may accrue to the Buyer and/or other obligations that may accrue to the Seller under the Contract. Such Goods and/or parts of the Installation so replaced shall be held on, and removed from, the Buyer's Site and returned to the Seller at the Seller's sole risk and expense, irrespective of whether such Goods and/or parts of the Installation are removed and returned by the Buyer or by the Seller.
- 26.5. The Seller must respond within a maximum of eight (8) working hours or such other period as specified in the Purchase Order or any Attachment to a request for service under the provisions of the Warranty Service, and must, wherever possible effect a repair within a maximum of a further eight (8) working hours.
- 26.6. If any such damage or defect cannot be remedied within the time scale detailed in Clause 26.4 and/or 26.5 above, or the Seller fails to respond and remedy the damage or defect within a reasonable time, the Buyer may proceed to engage the services of a third party to provide the Warranty Service. Any Warranty Service so undertaken shall be at the Seller's risk and expense, and any costs incurred by the Buyer shall be for the Seller's account. Should the Buyer exercise its rights under this Clause, the utilisation of a third party services shall not affect or invalidate the Warranty provisions, or relieve the Seller of its obligations to provide the Warranty Service for the remainder of the Warranty Period, nor the ability of the Buyer to enter into a maintenance agreement with the Seller, and the Seller shall be responsible for meeting its obligations thereafter. Should the Buyer exercise its rights under this Clause 26.6, this shall be without prejudice to any other rights which the Buyer may have against the Seller in respect of the Seller failing to remedy such defect or damage.
- 26.7. Where a defect involves a fault inherent in the design of the Goods and/or specification of Services provided, or any part thereof, the Seller shall, at their own expense, promptly carry out such re-design as may be necessary to prevent a recurrence of the defect, and upon completion shall rectify the fault in the Goods and/or standard of the Services provided. Any such re-design or re-specification shall be accomplished in such a manner as to ensure that the performance and operation of the Goods and/or Services is not adversely affected by virtue of such re-design and/or re-specification from the standard as accepted by the Buyer in accordance with these General Conditions of Contract.
- 26.8. The provisions of this Clause 26 shall not apply to any defect or damage which arises or develops as a result of any alteration, addition or attachment to the Goods where: -
- 26.8.1. the Seller has published by means of publication in its, or the Manufacturer's, Specifications, a notification stating that the alteration, addition or attachment will degrade the standard of performance of the Goods and/or invalidate the warranty;

26.8.2. the Seller has otherwise notified the Buyer in writing that a specific alteration, addition or attachment will adversely affect the standards of performance of the Goods and/or invalidate the warranty;

26.8.3. the warranty is invalidated by a negligent act or omission of the Buyer,

provided always that it shall be for the Seller to prove that any defect or damage has been caused by the alteration, addition or attachment. Save as set out above, the Buyer shall have the right to make any alteration and/or addition and/or attachment to the Goods, whether such alteration, addition and/or attachment is made by employees of the Buyer, by the Seller and/or by an appropriately qualified third party source, without reference to the Seller and the Seller shall not be relieved of any of its obligations to provide Warranty Services in accordance with this Clause 26.

26.9. All services under the provision of this warranty shall be provided free of all charges, and shall be carried out on the Site. Goods shall not be removed from the Site for the provision of Warranty Services without the permission of the Buyer.

26.10. In circumstances where Goods are authorised to be removed from the Site, the Goods shall at all times remain the property of the Buyer, but the risk inherent in the Goods shall pass to the Seller from the time the Goods are removed from their normal operating environment until they are returned and, where appropriate, reinstalled into the same operating environment, or any other operating environment designated by an authorised officer of the Buyer; appropriate acceptance tests have been concluded where necessary, and acceptance documentation has been signed by the Buyer.

26.11. The Seller shall be solely liable to rectify any loss or damage howsoever caused prior to such acceptance as a matter of urgency and, in any case, within a time scale to be agreed by both parties at the appropriate time.

26.12. Where Goods are held at the Seller's site the Goods must be readily identifiable as the property of the Buyer and the Seller must keep appropriate records thereof.

26.13. Should the Seller be affected by any incidents such as bankruptcy or liquidation the Seller must identify such Goods to the Receiver, etc. as the property of the Buyer.

26.14. Neither this Clause nor Clause 28 is intended to limit any statutory rights which may accrue to the Buyer and this Clause and Clause 28 are in addition to any standard warranty offered by the Seller or the Manufacturer.

27. LOAN EQUIPMENT

27.1. In circumstances where Goods or any specific components or parts thereof are removed from the Site in order to provide Warranty Services in accordance with Clause 26 above, or for any other reason as may be agreed by the parties, the Seller shall, upon the request of the Buyer, be required to provide Goods of an identical or nearest equivalent specification on a free loan basis for the entire period of time for which the original Goods and/or specific components or parts thereof are held on the Seller's site.

27.2. Any Goods supplied on loan in accordance with this Clause will remain the property of the Seller but will be held on site at the Buyer's risk. The risk shall return to the Seller immediately the Goods are removed from use by the Buyer and replaced by the original Goods. The Buyer undertakes to adequately insure the Goods against loss or damage whilst they are in use on the Buyer's Site, but will not accept any liability for failure or breakdown of the Goods due to wear and tear or faulty manufacture. The Seller must repair or replace Goods which are loaned to the Buyer and subsequently develop a fault within the timescales specified in Clause 26.5.

28. REPLACEMENT GOODS AND/OR SERVICES

28.1. In the event that all or any of the Goods and/or Services supplied in accordance with the Contract shall consistently fail to achieve and maintain the standards of performance either: -

- 28.1.1. as specified in the published specification for the Goods and/or Services as issued by the Manufacturer, and/or the service provider and/or the Seller;
- 28.1.2. as set out in the Specification;
- 28.1.3. as specified in the Purchase Order or any Attachment;
- 28.1.4. as demonstrated in the Acceptance Tests and/or accepted in writing by the Buyer; or
- 28.1.5. a combination of any of the above,

and provided that the Goods and/or the Installation and/or any physical output of the Services are being used by the Buyer in accordance with the Installation and/or operating instructions: -

- (a) issued and supplied by the Seller;
- (b) issued and/or published by the Manufacturer and/or the service provider;
- (c) where no instructions are provided, in accordance with generally accepted good practice appropriate to the Goods and/or Services; or
- (d) a combination of any of the above,

the Seller hereby warrants for the Warranty Period that the Goods and/or Services, or specific portion(s) thereof affected by such circumstances shall be replaced with goods and/or services of equal or nearest equivalent higher specification forthwith and free of all charges. This warranty and any services provided in fulfilment of it are not intended to remove any rights which the Buyer may have under Clause 26.

- 28.2. For the avoidance of doubt, "consistently fail" shall be defined as the Goods requiring a minimum of four (4) visits to provide service repairs, or a minimum of four (4) return visits to provide the Services to satisfactory standards, during the Warranty Period.
- 28.3. If the Goods and/or Services and/or the Installation are supplied without warranty, the provisions of this Clause 28 shall not apply unless the Buyer enters into a maintenance agreement with the Seller (either under the provisions of this Contract or subject to the provisions of a separate contract between the parties) which commences within thirty (30) calendar days, or such other period as maybe agreed between the parties, of the Acceptance Date. The rights and obligations of the parties set out in this Clause 28 shall apply for the first year (or such other period as maybe agreed by the parties and set out in an Attachment) of the valid term of such maintenance agreement.
- 28.4. Service calls which the Seller can prove as having been made necessary due to any negligent act or omission of the Buyer, or which are defined as return calls to replace parts shall be excluded from the total number of calls referred to in Clause 28.2.
- 28.5. If the Seller removes the Goods from the Site to undertake warranty repairs, and fails to return the Goods repaired and operating to the standards of performance as defined in Clause 28.1 within a maximum period of ten (10) Working Days, and/or fails to provide an adequate service within the same period, from the date of receiving the initial request from the Buyer, the failure shall be deemed to be one service call added to the cumulative total referred to in Clause 28.2 for each ten (10) working day period.
- 28.6. Replacement Goods and/or Services supplied by the Seller under this Clause 28 shall be supplied in accordance with these General Conditions of Contract. The Goods and/or Services shall be supplied with a full Warranty Service as defined in, and for the Warranty Period (except that the period will commence on the date that the replacement Goods and/or Services are accepted by the Buyer). The Buyer's rights to require the Seller to replace Goods and/or Services in accordance with this Clause shall apply to any replacement Goods and/or Services as if they were the Goods and/or Services originally supplied.

29. SAFETY

- 29.1. In accordance with the requirements of the Health & Safety at Work Act 1974 and any re-enactment or amendment thereof or any relevant regulations, any safety precautions required for the handling of the Goods are to be clearly indicated on each consignment.
- 29.2. Hazardous Goods must be marked in accordance with the Classification, Labelling and Packaging (CLP) Regulation (EC) No 1272/2008 and any relevant UK implementing legislation. Risk and safety phrases must be in English.
- 29.3. Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings. The Seller shall observe the requirements of U.K. and International Agreements relating to the packing, labelling and carriage of hazardous Goods.
- 29.4. Hazard data sheets must be supplied with the delivery for all hazardous materials, and the information contained in the data sheets must meet the legal requirements of the Health & Safety at Work Act, and any related Health and Safety Executive Guidance in force as at the date of Delivery.

30. STATUTORY AND OTHER REGULATIONS

- 30.1. The Seller shall in all matters arising in the performance of the Contract conform with all Acts of Parliament and with all orders, regulations and bye-laws made with statutory authority by Government Departments or by local or other authorities that shall be applicable to the Contract; the Seller shall also observe through its Personnel any rules applicable to the Site. The Buyer shall on request afford all reasonable assistance to the Seller in obtaining information as to local conditions. The Seller shall not in the performance of the Contract in any manner endanger the safety or unlawfully interfere with the convenience of the public. The cost to the Seller in meeting its requirements of this Clause shall be included in the Price, except as provided under Clause 30.4 hereof.
- 30.2. The Seller shall give the Buyer such prior written notice as the Buyer may require of the Delivery of any Goods having a toxic hazard or other hazard to the safety or health of persons or property, identifying those hazards and giving full details of any precautions to be taken by the Buyer on the delivery of such Goods and their subsequent storage or handling, and shall at all times observe its obligations under Clause 29 of this Contract.
- 30.3. Without prejudice to the foregoing, the Seller shall in all matters arising in the performance of the Contract conform, and provide all such assistance to the Buyer in order that the Buyer is able to conform, and maintain conformance, with all and any environmental legislation and laws (including, without limitation, the Environmental Protection Act 1990, the Waste Electrical Equipment Directive and the UK Waste Electrical and Electronic Equipment (WEEE) Regulations 2013 (as amended) and any other regulations made thereunder and any statutory amendments or re-enactments made thereto) applicable to the Goods and/or Services and/or the Contract (and including, without limitation, as maybe applicable to the disposal of the Goods and/or of any waste products created by the use of the Goods). In addition the Seller shall comply and conform, and maintain compliance and/or conformance with, all and any of the policies and procedures used by the Buyer in maintaining its commitment to, and the delivery of, its own environmental sustainability strategies and policies (including, without limitation, those which ensure that the Buyer conforms and complies with any applicable environmental legislation and laws) which are made known to the Seller.
- 30.4. In the event that either party incurs costs which it would not otherwise have incurred and which are caused by the other party's failure to comply with any law or any order, regulation or byelaw having the force of law, the amount of such costs shall be reimbursed by the other party.

31. WAIVER

- 31.1. No delay, neglect or forbearance on the part of either party in enforcing against the other party any of these General Conditions of Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Contract.

32. CONFIDENTIALITY

- 32.1. Without prejudice to Clause 18.4 of this Contract, each party (the '**Receiving Party**') shall keep confidential all information of the other party (the '**Disclosing Party**') obtained under or in connection with the Contract, that the Disclosing Party has designated as confidential, whether such information (which shall include, but not be limited to including, but not limited to, technical or trade secrets and the confidential aspects of tenders and information obtained by the Seller when visiting the Site) is related to the Contract or otherwise, shall not divulge the same to any third party without written consent of the Disclosing Party, and shall use it only for the purposes of the Contract.
- 32.2. The provisions of this Clause shall not apply to any information if such information is: -
- 32.2.1. in the public domain, other than through the fault of the Receiving Party, or
 - 32.2.2. in the possession of the Receiving Party before its disclosure by Disclosing Party; or
 - 32.2.3. obtained from a third party who is free to divulge the information concerned without a continuing restriction on its disclosure; or
 - 32.2.4. independently developed by the Receiving Party.
- 32.3. The Seller and the Buyer shall divulge the information of the other party only to those employees, including the agents and/or employees of any authorised sub-contractor in accordance with Clause 32.6 below, who are directly involved in the Contract and/or the Installation and/or use of the Goods and/or provision of the Services, and shall ensure that such employees are aware of and comply with these obligations as to confidentiality.
- 32.4. Where Goods, or specific parts thereof are deemed to be beyond economic repair and/or the Seller elects to replace parts under the provisions of the Warranty Service in accordance with Clause 26, and the Goods and/or parts thereof have, or are likely to have, data stored upon them, the Seller must erase all data from them and, if requested by the Buyer, provide written certification to confirm erasure. The Buyer reserves the right to request that relevant Goods, and/or specific parts or components thereof are returned to the Buyer for disposal. Such requests shall be made by the Buyer in writing.
- 32.5. In circumstances where the Seller is an agent of the Manufacturer, the Seller must obtain a written policy statement regarding the disposal of Goods upon which data is stored. Such a statement so submitted shall not excuse the Seller from its obligations under this Clause 32.
- 32.6. The Seller must ensure that its agents, employees and sub-contractors are bound by the requirements of this Clause, and shall be held responsible for any breaches of confidentiality committed by them.
- 32.7. Subject to the provisions of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004, the provisions of this Clause shall continue in perpetuity, notwithstanding the cancellation, termination or discharge of the Contract. The Buyer will comply with its duties as a Scottish Public Authority under this Act and Regulation. Where the Buyer receives a request for information received in confidence from the Seller, and in the Buyer's sole and absolute judgement, the Buyer is required to provide the requested information under the provisions of the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004, the Buyer will make reasonable efforts to consult the Seller before responding to the request within the timescales provided and set out in the said Act or Regulations.
- 32.8. Where the Seller holds information for and on behalf of the Buyer, and the Buyer receives a third party request in respect of the confidential information the Seller holds on behalf of the Buyer, and in the Buyer's sole and absolute judgement, the Buyer is required to provide the requested information under the provisions of the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004, the Seller will fully co-operate and provide all assistance requested and/or required by the Buyer in order to enable the Buyer to respond to such request within the timescales provided and set out in the said Act or Regulations.

- 32.9. The Seller shall not, without the Buyer's prior written consent: (a) make, or permit any person to make, any press or public announcements, or otherwise publicise or disclose the existence of the Contract or any of its terms; or (b) use the Buyer's name, logo, trade marks, or any other identifying marks in any advertising, marketing, promotional materials, or announcements (including on websites or social media platforms). The Seller shall ensure that its employees, agents, and sub-contractors comply with the obligations set out in this Clause 32.9.

33. CONSUMABLE SUPPLIES

- 33.1. The Buyer reserves the right to procure consumable supplies to be used on or with the Goods, and suitable for the Goods from the Seller or such other source as the Buyer may deem appropriate. Such procurement of consumables from a source other than the Seller shall not invalidate the rights of the Buyer under these General Conditions of Contract, and shall in no way affect the provisions in respect of warranty claims made in accordance with Clause 26, nor the Buyer's rights under Clause 28, provided that the consumables utilised meet the minimum standards as published by the Seller or the Manufacturer, or where no published standards are available, the standards generally accepted as being appropriate to the consumable supplies for use on the Goods concerned.
- 33.2. In the event that the Seller shall claim that the use of specific consumables is adversely affecting the standards of performance of the Goods and/or increasing the cost to the Seller of meeting its obligations to provide Warranty Services in accordance with Clause 26 and/or replacement goods in accordance with Clause 28 of this Contract, it shall be for the Seller to prove that the consumables do not meet the requisite minimum standards, and are affecting the Goods and/or increasing the Seller's costs as set out above. If the Seller proves that the consumables do not meet the requisite minimum standards the Buyer shall cease using the consumables concerned and procure alternative consumables which meet the standards required.

34. MAINTENANCE

- 34.1. If required by the Buyer before the end of the Warranty Period, the Seller shall enter into a separate contract for the maintenance of the Goods.
- 34.2. If a maintenance contract commences before the end of the Warranty Period the maintenance charges during the Warranty Period shall reflect the Seller's obligations under Clause 26 of this Contract.

35. SPARES

- 35.1. Where appropriate to the Goods supplied in accordance with this Contract, the Seller shall make available to the Buyer, or any nominated third party maintenance source, on request and with reasonable despatch and at reasonable prices, all spares and replacement parts as the Buyer, or nominated third party maintenance source, shall require for the Goods.
- 35.2. The Seller shall maintain a supply of such spares or replacement parts for a period of seven (7) years from the date of Delivery or the Acceptance Date, whichever is the later.
- 35.3. Such spares or replacement parts shall be required to be fully compatible with, and maintain as a minimum the same levels of performance as, the Goods originally supplied, but need not be identical to those items. The warranty in Clause 26 shall apply to the spares or replacement parts as if they were part of the original Goods.
- 35.4. If during this period the Seller, or their sub-contractor intend to discontinue the manufacture of spares or replacement parts for the Goods the Seller shall forthwith give notice to the Buyer of such intention, and advise the Buyer of any third party source from which the spares or replacement parts will be available, or to which third party source the Seller intends to provide drawings, patterns, specifications and other information.
- 35.5. If during the stipulated period of seven (7) years the Seller or its sub-contractor either:

- 35.5.1. fails to make available to the Buyer, or any nominated third party maintenance service provider, with reasonable despatch, at reasonable prices all such spares or replacement parts as the Buyer or nominated third party maintenance source shall require for the Goods; or
- 35.5.2. becomes insolvent or has a receiving order made against them, or commences to be wound up (not being a member's winding up for the purposes of reconstruction), then the Seller shall so far as it is legally entitled to do so, and if so required by the Buyer, as soon as practicable, deliver to the Buyer or their nominated third party maintenance source, free of charge such drawings, patterns, specifications and other information as referred to in Clause 35.4, and which the Buyer, or its nominated third party source, shall be entitled to retain for such time only as necessary for the exercise by the Buyer of its rights under this Clause, and which if the Seller so requires, shall be returned by the Buyer to the Seller at the Buyer's cost and expense.

36. ATTACHMENTS TO THE GOODS

- 36.1. The Buyer shall have the right to attach to, or install onto the Goods any goods (including but not limited to software) which the Buyer considers to be appropriate and necessary to enable the Goods to be utilised to the fullest extent as required by the Buyer. If the Buyer attaches or installs goods then this shall not have the effect of degrading the performance of the Goods, and shall not relieve the Seller from meeting its obligations to provide Warranty Services in accordance with Clause 26 or replacement goods in accordance with Clause 28 hereof provided that:-
 - 36.1.1. the goods attached or installed are not specified in any of the Seller's and/or the Manufacturer's published specifications as having the effect of degrading the standards of performance or invalidating the Buyer's rights under Clauses 26 and/or 28 as aforesaid;
 - 36.1.2. the Seller has not otherwise notified the Buyer in writing that the attachment or installation of specific goods will degrade the standards of performance or invalidate the Buyer's rights under Clauses 26 and/or 28 as aforesaid; and
 - 36.1.3. the goods have been attached or installed in accordance with the published instructions of the supplier of the goods concerned.
- 36.2. In the event that the attachments and/or installation is made by the Buyer, and the Seller can prove that such attachment or installation is adversely affecting the standard of performance of the Goods or otherwise increasing the frequency of the provision of Warranty Services, then the Seller shall be entitled to be reimbursed any associated costs which the Seller can demonstrate as being reasonably and necessarily incurred in providing Warranty Services or returning the Goods to the normal standards of performance in accordance with this Contract.

37. OPERATING MANUALS

- 37.1. The Seller shall supply to the Buyer all operating manuals and other documentation necessary for the satisfactory operation of the Goods, and in any event all documentation as specified in the Purchase Order or any Attachment. If, after the Acceptance Date, the operating manuals and documentation need updating or replacing the Seller shall be responsible for notifying the Buyer of the availability of such updates or replacements, and shall supply them at reasonable prices, upon receipt of appropriate Purchase Order documentation. The Seller shall provide the operating manuals and other documentation in the media format in which they are available at the appropriate time.

38. DISPUTE RESOLUTION

- 38.1. The Buyer and the Seller shall in good faith use all reasonable endeavours to resolve any dispute or difference that may arise between them in respect of the construction, meaning and effect of these General Conditions of Contract or any matter arising out of or in connection with the Contract in accordance with the dispute resolution procedure set out in the Attachment. If either party refuses to acknowledge the existence of a dispute notified by the other party then the first party may proceed to exercise its rights under Clause 38.2.

- 38.2. Subject to the provisions of Clause 38.1 above, any dispute or difference which may arise between the Buyer and the Seller in connection with or arising out of the Contract may be resolved by arbitration in which event, such dispute or difference shall be referred to a single arbitrator to be agreed between the Buyer and the Seller, or failing such agreement within fourteen (14) elapsed calendar days following the failure of one of the parties to acknowledge the existence of a dispute, to be nominated by the President of the Law Society of Scotland for the time being on the application of either party. Any such reference to arbitration shall be deemed to be an agreement to refer to arbitration within the meaning of the Arbitration (Scotland) Act 2010. Liability for any costs incurred in undertaking necessary arbitration procedure shall be agreed in writing by both parties at the appropriate time.

39. PROPERTY AND RISK

- 39.1. Property in the subject matters of the Contract shall pass to the Buyer at the time of payment, provided that such passing shall not prejudice either the Buyer's right to reject for non-conformity with Specification and shall not prejudice any other rights that the Buyer may have under the Contract. Where advance or progress payments are made and the Seller has not provided a Banker's Guarantee, title shall pass to the Buyer as soon as items are allocated by the Seller to the Contract. All items so allocated shall be adequately marked and recorded as being the property of the Buyer, and where such items are stored on the Seller's site, held in a separate secure area suitable for such storage purposes.
- 39.2. Unless otherwise stated in an Attachment, risk in the Goods and/or any parts, stages or portions of the Installation shall pass to the Buyer upon Delivery of the Goods and/or any parts, stages or portions of the Installation to the Buyer.

40. FORCE MAJEURE AND EXTENSION OF TIME

- 40.1. If, by any reason of any act or default of the Buyer or any other circumstance which is beyond the control of the Seller arising after the date of the Contract (which shall include (but not be limited to) acts of God, perils of the sea or air, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion, including acts of local government or parliamentary authority, and/or labour disputes (other than labour disputes, strikes or lock outs involving the Seller's own work force and/or staff employed by the Seller)), the Seller has been delayed or impeded in the completion of the Contract, and provided that the Seller shall immediately have given to the Buyer notice in writing of its claim for an extension of time, the Buyer shall on receipt of such notice grant the Seller from time to time in writing either prospectively or retrospectively such extension of the time for the completion of the Contract as may be reasonable, but which shall not, unless otherwise agreed between the parties in writing, exceed sixty (60) elapsed calendar days from the date of the Seller's notice to the Buyer as set out above. This Clause only applies if:
- 40.1.1. the Seller shall, immediately upon becoming aware that any such delay has been or is likely to be caused, give notice in writing to the Buyer specifying the circumstances causing or likely to cause the delay and the actual or estimated extent of the delay caused or likely to cause the delay;
 - 40.1.2. the Seller could not reasonably be expected to have foreseen at the date of the Contract that a delay would, or was likely to, occur;
 - 40.1.3. the Seller uses its best endeavours to prevent any delay being caused and to minimise any such delay to the satisfaction of the Buyer; and
 - 40.1.4. such delay is not attributable to any negligence, default or improper conduct of the Seller.
- 40.2. If the Buyer has granted the Seller an extension of time as set out in Clause 40.1, and the Contract is not completed within the extended period, the Buyer may by giving notice to the Seller terminate the Contract with immediate effect. Termination of the Contract under this Clause 40 shall be without prejudice to any rights which may have accrued to the Buyer to the effective date of such termination.

41. CORRUPT GIFTS AND PAYMENT OF COMMISSION

- 41.1. The Seller shall not offer or give or agree to give any person in the service of the Buyer any gift or consideration of any kind as an inducement or reward for doing or forbearing to do so or for having done or forborne to do an act in relation to the obtaining or execution of the Contract or any other contract with the Buyer.
- 41.2. The Seller shall comply with all applicable laws, statutes, and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010. Any breach of this Clause 41 by the Seller or by anyone employed by the Seller or acting on behalf of the Seller (whether with or without the knowledge of the Seller) or the commission of any offence by the Seller or by anyone employed by the Seller or acting on the Seller's behalf under the Bribery Act 2010 in relation to this Contract or any other contract with the Buyer, shall entitle the Buyer to terminate the Contract and recover from the Seller the amount of any loss resulting from such termination and/or to recover from the Seller the amount of value of any such gift, consideration or commission.
- 41.3. Where the Contract has been terminated under Clause 41.2 above, the powers given by Clause 14 (Delays by the Seller) and Clause 17 (Cancellation) shall apply as if there has been a failure to complete the Contract.
- 41.4. The Seller shall promptly report to the Buyer any request or demand for any undue financial or other advantage of any kind received by the Seller in connection with the performance of the Contract.
- 41.5. In any dispute, difference or question arising in respect of:-
- 41.5.1. the interpretation of this Clause 41 (except so far as the same may relate to the amount recoverable from the Seller under Clause 41.2 above in respect of any loss resulting from such termination of the Contract); or
 - 41.5.2. the right of Buyer to terminate and/or determine the Contract; or
 - 41.5.3. the amount of value of any such gift, consideration or commission,
- the decision of Buyer shall be final and conclusive.

42. SEVERABILITY

- 42.1. If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event that a provision that is fundamental to the purpose, fulfilment and/or performance of the Contract is held invalid, the Buyer and the Seller shall immediately commence good faith negotiations to remedy such invalidity.

43. EQUALITY & DIVERSITY

- 43.1. Notwithstanding the generality of Clause 3.2, the Seller shall (and shall procure that its Personnel shall) perform its obligations under or in connection with the Contract (including those in relation to the Goods and Services) in compliance with the Equality Act 2010 and all other Applicable Laws relating to equality and anti-discrimination.
- 43.2. All Personnel employed by the Seller for the purpose of performing the Contract must be fully trained, suitably qualified and experienced, and shall fulfil their duties in a professional, ethical manner, consistent with the Buyer's commitment to equal opportunities and the highest standards of behaviour.
- 43.3. The Seller shall not unlawfully discriminate, harass or victimise any person on grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, colour,

race, religion or belief, nationality or ethnic or national origins, or sex or sexual orientation (or any other protected characteristic) contrary to the Equality Act 2010 or other Applicable Laws.

- 43.4. The Seller shall comply with the provisions of Section 109 of the Equality Act in all dealings with its agents or sub-contractors.
- 43.5. Where in connection with this Contract, the Seller, its agents or sub-contractors, or the Seller's staff are required to carry out work on the Buyer's site or alongside the Buyer's employees or students on any other premises, the Seller shall comply with the Buyer's policies and codes of practice relating to equality and diversity as provided to the Seller from time to time.
- 43.6. The Seller shall provide such information as the Buyer requires about its policies and practices concerning the prevention of unlawful discrimination and the promotion of equality and diversity both in terms of employment and customer service. The Seller shall have regard to the promotion of equality and diversity and shall consider the promotion of equality and diversity as key objectives of the Contract.
- 43.7. The Buyer and Seller shall continue to monitor the performance and objectives of the contract throughout its duration and to make any amendments or changes necessary to the Contract, or its performance or objectives in order further to promote equality and diversity.
- 43.8. The Seller shall notify the Buyer immediately in writing as soon as it becomes aware of any investigation or proceedings brought against it under the Equality Act 2010.
- 43.9. Where any investigation is undertaken by a person or body empowered to conduct such an investigation and/or proceedings are instituted following such an investigation against the Seller or against the Buyer either in connection with the Contract or any Contract awarded to the Seller or generally, the Seller shall, without charge:-
 - 43.9.1. provide any information requested in the timescale allotted;
 - 43.9.2. attend and permit its employees to attend any meetings as required;
 - 43.9.3. allow access to and investigation of any documents or data deemed to be relevant to the investigation;
 - 43.9.4. allow itself and any of its employees to appear as witnesses in any proceedings; and
 - 43.9.5. co-operate fully with the person or body conducting the investigation.
- 43.10. Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the Seller, its staff, employees, agents or sub-contractors and where there is a finding against the Seller in any such investigation or proceedings, the Seller shall indemnify the Buyer with respect to all costs, charges and expenses (including legal and administrative expenses) incurred by the Buyer during or in connection with any such investigation or proceedings and further indemnify the Buyer for any compensation, damages, costs or other award the Buyer may be ordered or required to pay to a third party.
- 43.11. If a finding of unlawful discrimination or breach of equal opportunities legislation is made against the Seller or against the Buyer arising from the conduct of the Seller, the Buyer will require the Seller to take immediate remedial steps to prevent further recurrences.
- 43.12. If the Seller enters into any sub-contract as authorised in this Contract in connection with this Contract, it shall impose obligations on its sub-contractors terms which are identical to those imposed on it in this Clause. The Buyer expects that the Seller will not sub-contract to any business, service or group which has a poor history of discrimination in employment or service delivery. A breach of this Clause will be considered as a fundamental breach of the contract between the Buyer and the Seller incapable of remedy and shall entitle the Buyer to terminate the Contract with immediate effect.

44. ANTI-SLAVERY AND HUMAN TRAFFICKING

44.1. In performing its obligations under the Contract (including those in relation to the Goods and Services), the Seller shall:

(a) comply with the Modern Slavery Act 2015 and all other Applicable Laws regarding anti-slavery and human trafficking, including such statutes and regulations from time to time in force in such countries in which the Seller operates;

(b) have and maintain throughout the term of the Contract its own policies and procedures to ensure its compliance with the foregoing; and

(c) include in its contracts with its direct subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this Clause 44.1 including the requirement to comply with the Modern Slavery Act 2015 and all other Applicable Laws relating to anti-slavery and human trafficking from time to time in force.

44.2. The Seller shall use reasonable endeavours to implement due diligence procedures for its sub-contractors, suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

44.3. The Seller shall notify the Buyer as soon as it becomes aware of:

(a) any breach, or potential breach, of Applicable Laws regarding antislavery and human trafficking in any part of its business, its activities or committed by any of its Personnel; or

(b) any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Contract.

44.4. At the Buyer's request, the Seller shall prepare and deliver to the Buyer, no more than once per twelve (12) month period during the term of the Contract, a slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

44.5. Any breach of this Clause 44 by the Seller shall be deemed a material breach of the Contract incapable of remedy and shall entitle the Buyer to terminate the Contract with immediate effect in accordance with Clause **Error! Reference source not found.**

45. DATA PROTECTION

45.1. The Seller shall comply with the DP Laws when supplying any Goods or Services to the Buyer under this Contract. The parties acknowledge that the specific facts and circumstances will determine their roles as data controllers or processors. If and to the extent that each party will be an independent data controller or Personal Data shared under or in connection with the Contract, each party will at all times comply with DP Laws. Where, in respect of any Personal Data to be Processed by the Seller on behalf of the Buyer under the Contract, the Seller acts as a data processor and the Buyer acts as the data controller (as each such role is defined by the DP Laws), the following provisions will apply.

45.2. When Processing any Personal Data pursuant to the Contract, the Seller shall comply with the data protection obligations set out herein. Where the Buyer determines, acting reasonably, that the Processing involves high-risk, high-value, or otherwise complex Processing activities, the parties shall enter into a separate Data Processor Agreement setting out the Buyer's processing instructions and any contractual clauses or safeguards required to govern any international data transfers. In such case, the terms of the separate Data Processing Agreement shall take precedence over the data protection provisions set out in these terms and conditions. The Buyer shall ensure that appropriate measures are agreed with the Buyer's Data Protection Officer, in accordance with the Buyer's information governance and security policies and procedures, to provide sufficient guarantees to ensure that Personal Data will be processed in accordance with the DP Laws prior to any Personal Data being transferred to or accessed or otherwise Processed by the Seller.

- 45.3. The Seller shall not engage any sub-processor to Process Personal Data under this Contract without prior specific or general written authorisation of the Buyer. In the case of general written authorisation, the Seller shall inform the Buyer in advance of any intended changes concerning the addition or replacement of sub-processors, thereby giving the Buyer the opportunity to object to such changes. Where the Seller engages a sub-processor for carrying out specific processing activities on behalf of the Buyer, the Seller shall ensure that the same data protection obligations as set out in the Contract (or other legal act between the Buyer and the Seller) are imposed on that sub-processor by way of a written contract. If a sub-processor fails to fulfil its data protection obligations, the Seller shall remain fully liable to the Buyer for the performance of that sub-processor's obligations.
- 45.4. The Seller shall ensure that appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful Processing and against loss, destruction, damage, alteration or disclosure. Such measures shall (taking into account the state of technological development and the cost of implementing such measures, and the risks to the rights and freedoms of data subjects) be appropriate to the nature of the Personal Data Processed by the Seller.
- 45.5. The Seller shall only Process Personal Data on behalf of the Buyer in accordance with the Contract and Data Processor Agreement in accordance with the DP Laws, and in accordance with any other instructions issued by the Buyer from time to time and for no other purpose whatsoever, unless required to do so by law. If the Seller is required to Process Personal Data for another purpose, it shall inform the Seller of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest.
- 45.6. The Seller shall keep all Personal Data Processed under the Contract secure and confidential, and will ensure that only those of its employees, agents or contractors who need access to such Personal Data for the purpose of fulfilling the Seller's obligations under the Contract shall have access to the Personal Data. The Seller will ensure that all such persons are subject to appropriate confidentiality obligations, whether contractual or statutory.
- 45.7. The Seller shall adopt and maintain a written security policy in relation to Personal Data Processed by it on behalf of the Buyer and shall ensure that all relevant employees are aware of and abide by all of the provisions of such policy and the provisions of the Contract, in particular this Clause 45. The Seller shall make such policy available for inspection on request by the Buyer.
- 45.8. The Seller shall, at the times agreed between the parties and/or on reasonable notice at any time:
- 45.8.1. permit the Buyer's representatives to access the Seller's premises where Personal Data is Processed under this Contract to enable the Buyer to ascertain whether the Seller is complying with Clauses 45.1 to 45.6 inclusive of the Contract;
- 45.8.2. permit the Buyer's representatives to access the Personal Data Processed by the Seller on behalf of the Buyer, including but not limited to where this is necessary in order to enable the Buyer to respond to a data subject request made under DP Laws.
- 45.9. The Seller will assist the Buyer by appropriate technical and organisational measures, insofar as this is possible, in fulfilling the Buyer's obligations to respond to requests from data subjects to exercise their rights under DP Laws.
- 45.10. The Seller shall indemnify the Buyer in full against all losses, claims, costs, expenses or other liabilities awarded against, or incurred by, the Buyer as a result of, or in connection with, any breach of this Clause 45 by the Seller, its employees, workers or agents.
- 45.11. Upon termination or expiry of the Contract the Seller, at the choice of the Buyer shall securely delete or return to the Buyer all Personal Data Processed on behalf of the Buyer for the purposes of the provision of the Services under, and/or the performance of the Contract by the Seller, unless any Applicable Laws require retention of that Personal Data. If retention is required, the Seller shall inform the Buyer of the legal requirement and shall continue to ensure compliance with the DP Laws in respect of such retained data.

- 45.12. In Clauses 45 and 46 the terms '**data subject(s)**', '**data subject request**' '**Personal Data**', '**personal data breach**', '**Process**', '**Processing**' shall have the meanings given to them in the UK GDPR (and, where applicable, the EU GDPR).

46. INFORMATION SECURITY

- 46.1. Without limitation to any other information governance requirements set out in the Contract, the Seller shall:
- 46.1.1. implement appropriate organisational and technical information security measures and systems to maintain its information security and the ongoing confidentiality, integrity, availability and resilience of its data processing systems and services;
 - 46.1.2. have in place appropriate plans and procedures to allow it to respond efficiently and effectively to an information security incident;
 - 46.1.3. regularly review its information security arrangements to verify its application in practice and maintain and keep records evidencing the same;
 - 46.1.4. notify the Buyer without undue delay (and in any event within forty-eight (48) hours) of any information security breaches, personal data breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches); and will assist the Buyer in ensuring its obligations in relation to notification of a personal data breach to the relevant supervisory authority and (if determined by the Buyer to be required) communication of a personal data breach to the affected data subject(s).
 - 46.1.5. fully cooperate with any audits or investigations relating to information security and any data protection impact assessments undertaken by the Buyer and shall provide full information as may be reasonably requested by the Buyer in relation to such audits, investigations and assessments and make available all information necessary to enable the Buyer to demonstrate compliance with its obligations under the DP Laws and other Applicable Laws. The Seller will immediately inform the Buyer if, in its opinion, an instruction infringes the DP Laws.
- 46.2. When the goods or services provided by the Seller require the Seller to use any of the Buyer's information systems then the Seller shall ensure that all such use complies with the Buyer's regulations and policies.
- 46.3. The Seller shall procure that all persons who are providing Goods or performing Services in connection with the performance of the Contract are aware of and shall comply with the terms in this Clause 46.

47. BUSINESS CONTINUITY

- 47.1. The Seller will provide, maintain, update and test a business continuity plan for the Services in accordance with the requirements in this Clause 47 and Good Industry Practice.
- 47.2. The Seller will make its business continuity plan (in so far as relevant to the Services) available for inspection by the Buyer and its third party representatives via a mechanism to be agreed between the Seller and the Buyer.
- 47.3. The Seller warrants and undertakes that:-
- 47.3.1. its systems, methods, procedures and processes, whether manual or automated and, if automated, whether mechanical or computer based, are all managed and structured so as to provide business continuity in the event of an incident as further described in its business continuity plan;

- 47.3.2. all data (in so far as relevant to the Services) is backed up on a regular basis and the backed up data is held in a secure environment;
- 47.3.3. the backup functions are capable of ensuring that the performance of its obligations will not be disrupted for a period of more than seventy-two (72) hours; and
- 47.3.4. its systems are operated so as to minimise downtime.
- 47.4. The Seller will test its business continuity plan on a regular basis (in any event no less than once every calendar year).
- 47.5. The Seller will promptly carry out any remedial measures or changes to its business continuity plan as may be necessary to ensure its compliance with its obligations pursuant to its business continuity plan or this Clause 47.
- 47.6. The Seller will notify the Buyer as soon as possible if it believes that there has been, or is likely to be, a material disruption to its business continuity in relation to any Services that requires the implementation of its business continuity plan. If necessary to do so, the Seller will then immediately implement its business continuity plan and perform its obligations as set out in the same.
- 47.7. If any data held or processed by or on the behalf of the Seller is corrupted, lost or sufficiently degraded (including any failure of the business continuity plan to back-up and protect the data) so as to be materially impaired or unusable, the Buyer may:-
 - 47.7.1. require the Seller, at its own expense, to restore or procure the restoration of that data as soon as practicably possible; and/or
 - 47.7.2. itself restore or procure the restoration of that data and shall be reimbursed by the Seller for any reasonable expense incurred in doing so.
- 47.8. When the goods or services provided by the Seller require the Seller to use any of the Buyer's information systems then the Seller shall ensure that all such use complies with Buyer regulations and policies.

48. NOTICES

- 48.1. Any notice given to a party under or in connection with the Contract shall be in writing marked for the attention of the relevant party's authorised representative, addressed to the address stated at the beginning of this Contract, and shall be:
- 48.1.1. delivered by hand;
 - 48.1.2. within the UK, by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - 48.1.3. from outwith the UK, by courier.
- 48.2. Any notice shall be deemed to have been received:
- 48.2.1. if delivered by hand, on signature of a delivery receipt;
 - 48.2.2. if sent within the UK by pre-paid first-class post or other next working day delivery service, at 12.00 pm on the second Working Day after posting or at the time recorded by the delivery service whichever is later; or
 - 48.2.3. if sent from outwith the UK, at the time signed by the receiving party as recorded by the courier.
- 48.3. This Clause 48 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

49. RIGHTS OF THIRD PARTIES

- 49.1. For the purposes of clarification, nothing in the Contract shall confer on any sub-contractor or other third party any benefit or the right to enforce any provision of the Contract.

50. LAW

- 50.1. The construction validity and performance of the Contract, shall be governed by the Law of Scotland, and, subject to the provisions of Clause 38.1 and 38.2, shall be subject to the exclusive jurisdiction of the Scottish courts.

VERSION 4 (July 2025)