

## CONDITIONS FOR THE SUPPLY OF IT SERVICES AND EQUIPMENT

The Customer's attention is particularly drawn to condition 14

### 1 INTERPRETATION

1.1 The definitions and rules of interpretation in these conditions apply in these terms and conditions.

**Business Day** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

**Contract** means the contract between the Supplier and the Customer for the supply of Equipment and/or Services in accordance with these conditions;

**Customer** means the person, firm or company who purchases the Equipment and/or Services from the Supplier;

**Equipment** means the equipment agreed in the Contract to be purchased by the Customer from the Supplier (including without limitation any part or parts of it), as set out in the Order;

**Equipment Specification** means any specification for the Equipment, as set out in the Order;

**Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**Order** means the Customer's order for the supply of Equipment and/or Services, as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's quotation;

**Services** means the services to be provided by the Supplier under the Contract, as set out in the Order;

**Services Specification** means any specification for the Services, as set out in the Order;

**Supplier** means Flyford Connect Limited, a company incorporated and registered in England and Wales with company number 09248336 whose registered office is at Hurstons 13 Hight Street, Branston, Lincoln LN4 1NB; and

**VAT** means value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Condition, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.8 A reference to writing or written includes faxes and email.

1.9 References to conditions and Schedules are to the conditions and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

### 2 APPLICATION OF CONDITIONS

2.1 These conditions shall:

2.1.1 apply to and be incorporated in the Contract; and

2.1.2 prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

### 3 BASIS OF CONTRACT

3.1 The Order constitutes an offer by the Customer to purchase Equipment and/or Services in accordance with these conditions; accordingly, the execution and return of the acknowledgement copy of the purchase order form by the Supplier, or the Supplier's commencement or execution of work pursuant to the Purchase Order, shall establish a contract for the supply and purchase of those Services and/or Equipment on these conditions.

3.2 No Order which has been acknowledged by the Supplier may be cancelled by the Customer, except with the agreement in writing of the Supplier and provided that the Customer indemnifies the Supplier in full against all loss (including without limitation loss of profit), costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.

3.3 Any quotation given by the Supplier shall not constitute an offer, and is valid for 30 days only. The Supplier may withdraw it at any time by notice to the Customer.

3.4 All of these conditions shall apply to the supply both Equipment and Services except where application to one or the other is specified.

### 4 EQUIPMENT

4.1 The quantity and description of the Equipment shall be set out in the Equipment Order.

4.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for illustrative purposes only and they do not form part of the Contract.

4.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

4.4 The Supplier reserves the right (but does not assume the obligation) to make any changes in the specification of the Equipment which are required to conform with any applicable legislation or, where the Equipment is to be supplied to the Customer's specification, which do not materially affect their quality or performance. Where the Supplier is not the manufacturer of the Equipment, the Supplier shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to the Supplier.

4.5 The Supplier's employees, contractors and agents are not authorised to make any representations or contractually binding statements concerning the Equipment.

### 5 DELIVERY OF EQUIPMENT

5.1 The Supplier shall deliver the Equipment to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Equipment is ready.

5.2 Delivery of the Equipment shall be completed on the Equipment's arrival at the Delivery Location.

5.3 The Supplier shall use its reasonable endeavours to deliver the Equipment on the date or dates specified in the Supplier's acknowledgement of order, but any such date is approximate only. If no dates are specified, delivery shall be within a reasonable time of acceptance of the order. Time is not of the essence as to the delivery of the Equipment and the Supplier shall not be liable for any delay in delivery of the Equipment, however caused.

5.4 Delivery shall be made during normal business hours (excluding bank or public holidays). The Supplier may levy additional charges for any deliveries made outside such hours at the Customer's request.

5.5 The Customer shall be responsible (at the Customer's cost) for preparing the Delivery Location for the delivery of the Equipment and for the provision of all necessary access and facilities reasonably required to deliver and install the Equipment. If the Supplier is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, the Supplier may levy additional charges to recover its loss arising from this event.

5.6 If the Supplier fails to deliver the Equipment, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Equipment of similar description and quality in the cheapest market available, less the price of the Equipment. The Supplier shall have no liability for any failure to deliver the Equipment to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide the Supplier with adequate delivery instructions for the Equipment or any relevant instruction related to the supply of the Equipment.

5.7 If the Customer fails to accept or take delivery of the Equipment within 3 Business Days of the Supplier notifying the Customer that the Equipment is ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Equipment:

5.7.1 delivery of the Equipment shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Equipment was ready; and

5.7.2 the Supplier shall store the Equipment until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

5.8 If 10 Business Days after the Supplier notified the Customer that the Equipment was ready for delivery the Customer has not taken or accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Equipment and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Equipment or charge the Customer for any shortfall below the price of the Equipment.

5.9 The Supplier may deliver the Equipment by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

### 6 QUALITY OF EQUIPMENT

6.1 The Supplier warrants that on delivery the Equipment shall:

6.1.1 conform in all material respects with the Equipment Specification;

6.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

6.1.3 be fit for any purpose held out by the Supplier.

6.2 Subject to condition 6.3, if:

6.2.1 the Customer gives notice in writing within a reasonable time of discovery that some or all of the Equipment do not comply with the warranty set out in condition 6.1;

6.2.2 the Supplier is given a reasonable opportunity of examining such Equipment; and

6.2.3 the Customer (if asked to do so by the Supplier) returns such Equipment to the Supplier's place of business at the Customer's cost, the Supplier shall, at its option, repair or replace the defective Equipment, or refund the price of the defective Equipment in full.

6.3 The Supplier shall not be liable for the Equipment's failure to comply with the warranty in condition 6.1 if:

6.3.1 the Customer makes any further use of such Equipment after giving a notice in accordance with condition 6.2;

6.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice;

6.3.3 the defect arises as a result of the Supplier following any drawing, design or Equipment Specification supplied by the Customer;

6.3.4 the Customer alters or repairs such Equipment without the written consent of the Supplier;

6.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;

6.3.6 the Equipment differs from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

6.4 Except as provided in this condition 6, the Supplier shall have no liability to the Customer in respect of the Equipment's failure to comply with the warranty set out in condition 6.1.

6.5 The terms of these Conditions shall apply to any repaired or replacement Equipment supplied by the Supplier under condition 6.2.

6.6 The Supplier shall not in any circumstances be liable for any damage or defect to the Equipment caused by improper use of the Equipment or use outside its normal application.

### 7 TITLE AND RISK

7.1 The risk in the Equipment shall pass to the Customer on completion of delivery.

7.2 Title to the Equipment shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Equipment.

7.3 Until title to the Equipment has passed to the Customer, the Customer shall:

7.3.1 store the Equipment separately from all other Equipment held by the Customer so that it remains readily identifiable as the Supplier's property;

7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;

7.3.3 maintain the Equipment in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

7.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in conditions 15.2.4 to 15.2.12;

7.3.5 give the Supplier such information relating to the Equipment as the Supplier may require from time to time.

7.4 If before title to the Equipment passes to the Customer the Customer becomes subject to any of the events listed in conditions 15.2.4 to 15.2.12, then, without limiting any other right or remedy the Supplier may have:

7.4.1 the Customer's right to resell Equipment or use it in the ordinary course of its business ceases immediately; and

7.4.2 the Supplier may at any time:

(a) require the Customer to deliver up all Equipment in its possession which have not been resold, or irrevocably incorporated into another product; and

(b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment are stored in order to recover them.

### 8 SUPPLY OF SERVICES

8.1 The Supplier shall provide the Services to the Customer in accordance with the Order in all material respects. The Services shall only be provided in respect of the equipment in place at the time of entering the Contract and the Equipment supplied by the Supplier (i.e. equipment purchased by the Customer after the Contract is entered shall not be supported or managed by the Supplier).

8.2 The Supplier shall use reasonable endeavours to meet any performance dates for the Services specified in the Order, but such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

8.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in such event.

8.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8.5 The Supplier shall not be in any circumstances liable to the Customer as a result of the Customer's failure to follow the Supplier's oral or written instructions as to the use or maintenance of any of the Customer's equipment to which the Services relate and where the Services are provided for a fixed price, the Supplier reserves the right to charge on a time and materials basis, in accordance with condition 11.4 as a consequence of the Customer's failure.

### 9 CUSTOMER'S OBLIGATIONS

9.1 The Customer shall:

9.1.1 ensure that the terms of the Order and (if submitted by the Customer) the Equipment Specification and/or Service Specification are complete and accurate;

9.1.2 co-operate with the Supplier in all matters relating to the Services;

9.1.3 provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by the Supplier;

9.1.4 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

9.1.5 provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects; and

9.1.6 be responsible (at its own cost) for preparing the relevant premises for the supply of the Services.

9.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall in all circumstances be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

9.3 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of six months after the completion of the Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier.

9.4 Any consent given by the Supplier in accordance with condition 9.3 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to such employee or sub-contractor.

### 10 RESTRICTIONS ON THE CUSTOMER

10.1 Where a support contract is in place, the Customer shall not have administrator rights over the Equipment or any servers used in providing the Services, and shall not make any changes to them without Flyford's prior written consent.

10.2 The Customer shall not host any of the software provided as part of the Services.

### 11 CHARGES AND PAYMENT

11.1 The price of the Equipment shall be set out in the Order or, if no price is quoted, the price set out in the Supplier's price list as at the date of delivery. The price of the Equipment is exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties.

11.2 The Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of such of the Equipment as has not been delivered to reflect any increase in the cost to the Supplier which is due to market conditions or any factor beyond the control of the Supplier (including without limitation any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Equipment which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the

- Customer to give the Supplier adequate information or instructions.
- 11.4 Where the Services are provided on a time-and-materials basis:
- 11.4.1 the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates as amended from time to time;
- 11.4.2 the Supplier's standard daily fee rates are calculated on the basis of an eight-hour day worked between 8.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
- 11.4.3 the Supplier shall be entitled to charge at an overtime rate of £650 per day for time worked by members of the Services team outside the hours referred to in condition 11.4.2 on a pro-rata basis; and
- 11.4.4 the Supplier shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 11.4.
- 11.5 The Supplier reserves the right to increase its standard daily rates. The Supplier will give the Customer written notice of any such increase two months before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within two weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving two weeks' written notice to the Customer.
- 11.6 Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Order. All amounts due under this agreement shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 11.7 Any fixed price contained in the Order excludes:
- 11.7.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier; and
- 11.7.2 VAT, which the Supplier shall add to its invoices at the appropriate rate.
- 11.8 The Customer shall pay each invoice submitted to it by the Supplier in full, and in cleared funds, within 30 days of receipt.
- 11.9 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on the due date the Supplier shall be entitled to:
- 11.9.1 charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Lloyds Bank plc accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;
- 11.9.2 suspend all Services until payment has been made in full;
- 11.9.3 suspend any further deliveries of Equipment (whether ordered under the same contract or not) to the Customer;
- 11.9.4 suspend all further manufacture, delivery, installation or warranty service in relation to the Equipment until payment has been made in full;
- 11.9.5 make a storage charge for any undelivered Equipment at its current rates from time to time;
- 11.9.6 stop any Equipment in transit; and
- 11.9.7 a general lien on all Equipment and property belonging to the Customer, exercisable in respect of all sums lawfully due from the Customer to the Supplier. The Supplier shall be entitled, on the expiry of 10 Business Day's notice in writing, to dispose of such Equipment or property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding.
- 11.10 Time for payment shall be of the essence of the Contract.
- 11.11 All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 11.12 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.
- 11.13 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).
- 12 INTELLECTUAL PROPERTY RIGHTS**
- 12.1 All Intellectual Property Rights and all other rights in or arising out of or in connection with the Services and/or used by or subsisting in the Equipment shall be owned by the Supplier.
- 12.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to licence such rights to the Customer.
- 13 CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY**
- 13.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier or its agents, and any other confidential information concerning the Supplier's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the Customer's obligations to the Supplier, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.
- 13.2 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.
- 13.3 This condition 13 shall survive termination of the Contract, however arising.
- 14 LIMITATION OF LIABILITY**
- 14.1 The following provisions set out the entire financial liability of the Supplier (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 14.1.1 any breach of the Contract howsoever arising;
- 14.1.2 any use made by the Customer of the Services, the Equipment or any part of them; and
- 14.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.
- 14.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 14.3 Nothing in these conditions excludes the liability of the Supplier:
- 14.3.1 for death or personal injury caused by the Supplier's negligence; or
- 14.3.2 for fraud or fraudulent misrepresentation.
- 14.4 Subject to condition 14.2 and condition 14.3:
- 14.4.1 the Supplier shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
- (a) loss of profits; or
- (b) loss of business; or
- (c) depletion of goodwill or similar losses; or
- (d) loss of anticipated savings; or
- (e) loss of goods; or
- (f) loss of contract; or
- (g) loss of use; or
- (h) loss or corruption of data or information; or
- (i) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 14.4.2 the Supplier's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.
- 15 TERMINATION**
- 15.1 The Contract shall continue, unless terminated earlier in accordance with either condition 15.2 until either party gives to the other party 6 months written notice to terminate.
- 15.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:
- 15.2.1 the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;
- 15.2.2 the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- 15.2.3 the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- 15.2.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 15.2.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 15.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 15.2.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- 15.2.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 15.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 15.2.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 15.2.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 15.2.4 to condition 15.2.10 (inclusive);
- 15.2.12 there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 15.3 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- 15.4 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.
- 16 FORCE MAJEURE**
- The Supplier shall not in any circumstances have any liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of the Supplier or sub-contractors.
- 17 WAIVER**
- No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 18 RIGHTS AND REMEDIES**
- The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 19 SEVERANCE**
- 19.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this condition shall not affect the validity and enforceability of the rest of this agreement.
- 19.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 20 ENTIRE AGREEMENT**
- 20.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 20.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 20.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 21 ASSIGNMENT**
- 21.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 21.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 22 NO PARTNERSHIP OR AGENCY**
- Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 23 THIRD PARTY RIGHTS**
- No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 24 NOTICES**
- 24.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:
- 24.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or
- 24.1.2 sent by fax to its main fax number.
- 24.2 Any notice or communication shall be deemed to have been received:
- 24.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 24.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service;
- 24.2.3 if sent by fax, at 9.00 am on the next Business Day after transmission.
- 24.3 This condition 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. For the purposes of this condition, "writing" shall not include email.
- 25 GOVERNING LAW**
- The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales.
- 26 JURISDICTION**
- Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-

contractual disputes or claims).