

1. DEFINITIONS

In this document the following words shall have the following meanings:

"ABC Laws" means the applicable laws relating to bribery, corruption and related matters, including the Bribery Act 2010;

"Agreement" means these terms and conditions together with the terms of any applicable Purchase Order;

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

"Business Hours" means 9.00am to 5.00pm on a Business Day.

"Buyer" means British Engineering Services Limited, British Engineering Services Unit 718 Eddington Way, Birchwood Park, Warrington, United Kingdom, WA3 6BA or any of its Group Companies as set out in the relevant Purchase Order;

"Buyer Materials" means all materials, equipment and tools, drawings, specifications, documentation and data supplied by the Buyer to the Supplier.

"Confidential Information" means all confidential and/or proprietary information in any form and whether or not marked confidential, which one party directly or indirectly discloses, or makes available, to the other, including but not limited to all information relating to the business, affairs, customers, clients, suppliers, plans, intentions, commercial or market opportunities together with all financial, commercial, economic, technical and legal information and information relating to the operations, processes, products, specifications, technical information, trade secrets, services, personnel, intellectual property, data, know-how, designs, photographs, drawings, patterns, plans, models, specifications, software programs and software applications, samples, computer output or other materials and records;

"Control" has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly;

"Deliverables" means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

"Goods" means the Goods (or any part of them) set out in the Purchase Order;

"Group Company" means, in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company;

"Intellectual Property Rights" means patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other

intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“**Policies**” means the Buyer’s Anti-Bribery and Corruption Policy, Modern Slavery Policy, Health and Safety Policy and No PO No Pay Policy that all equally apply and are in force across all Buyer Group Companies and which are available on request by the Supplier and on the Buyer’s website at www.britishengineeringservices.co.uk

“**Purchase Order**” means the Buyer’s order for the supply of Goods and/or Services, as set out in the Buyer’s purchase order form or in the Buyer’s written acceptance of the Supplier’s quotation as the case may be;

“**Services**” means the Services, including any Deliverables, to be provided by the Supplier under the Agreement;

“**Supplier**” means the person or firm from whom the Buyer purchases the Goods and/or Services;

“**Supplier Personnel**” means all the persons employed by the Supplier, together with the Supplier’s staff, agents, consultants, officers, suppliers, sub-consultants, and other workers of the Supplier who are engaged in the provision of the Services from time to time;

2. **GENERAL**

2.1 These Terms and Conditions shall apply to all contracts for the supply of Goods and/or Services by the Supplier pursuant to one or more Purchase Orders and apply to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Terms and Conditions.

2.2 Where it is agreed that the Supplier shall supply Goods and/or Services, the Goods and/or Services to be supplied, the price payable and any other special terms agreed between the parties shall be set out in the Purchase Order. All Purchase Orders shall be subject to these Terms and Conditions. A Purchase Order may only override these Terms and Conditions to the extent such intention is expressly set out in the Purchase Order.

2.3 No changes or variations to these Terms and Conditions or any Purchase Order shall be effective unless agreed in writing between the Supplier and the Buyer’s Group Procurement Manager or a member of the Buyer’s Senior Executive Team.

3. **PRICE AND PAYMENT**

3.1 The price for the Goods and/or Services shall be as specified in the Purchase Order. The price shall include, without limitation, any and all costs incurred in connection with the supply of the Goods and Services (including costs of manufacturing, packing, loading, transport, unloading, taxes, import/export charges, and customs duties) .

3.2 Once a Purchase Order has been agreed by the Buyer, the price for the Goods and/or Services shall be fixed and not subject to any revision without the prior written agreement

of the Buyer's Group Procurement Manager or a member of the Buyer's Senior Executive Team.

- 3.3 If the parties agree that the Supplier is to provide Goods and/or Services or resources in addition to those specified in a Purchase Order, then such agreement will be reflected in a further Purchase Order, which will be deemed incorporated into this Agreement.
- 3.4 An invoice shall be produced by the Supplier to the Buyer in accordance with the terms set out in the Purchase Order. The Buyer shall pay for the Goods and/or Services within sixty (60) days following the month in which the Goods and/or Services are supplied in accordance with the Agreement or in which a correctly rendered invoice is received, whichever is the later. In no circumstances shall the time for payment be of the essence of the Agreement.
- 3.5 If a party fails to make any payment due to the other party under the Agreement by the due date for payment, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each date at three percent (3%) a year above the Bank of England's base rate from time to time, but at three percent (3%) a year for any period when the base rate is below zero percent (0%). Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from five (5) days after the dispute is resolved until payment.
- 3.6 The Buyer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Buyer against any liability of the Buyer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Agreement. If the liabilities to be set off are expressed in different currencies, the Buyer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Buyer of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Agreement or otherwise.

4. SUPPLY OF GOODS

- 4.1 The Supplier shall ensure that all Goods and materials supplied under this Agreement shall be of good quality, free from any defects, patent or latent, in material and workmanship, conform to applicable specifications and drawings and be fit for any purpose held out by the Supplier or made known to the Supplier by the Buyer, expressly or by implication and remain so for such time period after delivery as is specified in the Purchase Order, or where no such time period is specified then at least twelve (12) months following delivery. The approval by the Buyer of any designs provided by the Supplier shall not relieve the Supplier of its obligations under any provision contained in this clause.
- 4.2 The Supplier shall ensure that all Goods and materials supplied under this Agreement will comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 4.3 Where there is a breach of the warranty contained in clause 4.1 by the Supplier, the Buyer, without thereby waiving any rights or remedies otherwise provided by law and/or elsewhere in this Agreement, may require the Supplier to repair or replace the defective Goods at the Supplier's risk and expense or to refund the price or part of the price relating to the defect to the Buyer.



4.4 Items repaired or replaced shall be subject to these Terms and Conditions in the same manner as those originally delivered under this Agreement. If the Supplier refuses or fails promptly to repair or replace items when requested under this provision, the Buyer may itself, or through an agent or sub-contractor, or otherwise, repair or replace any item itself and the Supplier agrees to reimburse the Buyer for any costs or expenses incurred, such costs will be clearly communicated by the Buyer.

4.5 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement in respect of the Goods.

4.6 The Buyer may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Agreement.

5. DELIVERY OF GOODS

5.1 Delivery of the Goods shall be made Delivery Duty Paid (Incoterms 2020) to such location as the Buyer shall direct (the "**Delivery Location**"). Any time agreed between the parties for such delivery shall be of the essence of the Agreement and the Buyer shall be entitled to cancel, without notice, the whole or any part of this Agreement if this clause is not complied with by the Supplier.

5.2 The Supplier shall deliver the Goods:

5.2.1 on the date specified in the Purchase Order or, if no such date is specified, then as otherwise agreed in writing between the parties; and

5.2.2 during Business Hours, or as instructed by the Buyer.

5.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

5.4 Where the Buyer cancels the whole or part of the Agreement in accordance with clause 5.1:

5.4.1 all sums payable by the Buyer in relation to the whole or part of the Agreement cancelled shall cease to become payable;

5.4.2 all sums paid by the Buyer in relation to the whole or part of the Agreement cancelled shall be repaid by the Supplier immediately; and

5.4.3 the Buyer shall be entitled to recover damages from the Supplier for any loss caused as a result of the Supplier's failure to deliver the Goods and/or as a result of the cancellation of the whole or part of the Agreement.

6. TITLE

6.1 The Supplier warrants and represents that it has good title to the Goods and that it will transfer such title as it may have in the Goods to the Buyer pursuant to clause 6.2.

6.2 The title in the Goods shall pass to the Buyer on the earlier of:

6.2.1 payment for the Goods; or

6.2.2 completion of delivery.

6.3 In the event of title in the Goods passing to the Buyer prior to delivery, the Supplier shall:

6.3.1 store the Goods separately from all other goods held by the Supplier so that they remain readily identifiable as the Buyer's property;

6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price until the completion of delivery;

6.3.4 notify the Buyer immediately if it becomes subject to any event set out in clause 11.3.3; and

6.3.5 give the Buyer such information as the Buyer may reasonably require from time to time relating to:

(a) the Goods; and

(b) the ongoing financial position of the Supplier.

7. **RISK**

The Goods will be and shall remain at the Supplier's risk until such time as they are delivered to the Buyer (or at his direction) and are found to be in accordance with the requirements of this Agreement. It shall be the duty of the Supplier at all times to maintain a contract of insurance over the Goods and, on request from the Buyer, to assign to the Buyer the benefits of such insurance.

8. **INSPECTION OF GOODS**

8.1 The Buyer shall inspect the Goods upon delivery and where Goods are damaged or defective, the Buyer shall notify the Supplier.

8.2 The Buyer may reject the damaged or defective Goods and the following provisions shall apply:

8.2.1 the Supplier shall collect the damaged or defective Goods from the Buyer at the Supplier's expense;

8.2.2 during the period between delivery of the Goods to the Buyer and collection by the Supplier, the Buyer shall not be liable for any loss or further damage caused to the damaged or defective Goods;

8.2.3 all sums payable by the Buyer in relation to the damaged or defective Goods shall cease to become payable;



- 8.2.4 all sums paid by the Buyer in relation to the damaged or defective Goods shall be repaid by the Supplier immediately; and
- 8.2.5 the Buyer shall be entitled to claim damages from the Supplier for any losses caused to the Buyer as a result of the Goods being damaged or defective.
- 8.3 Where there are shortages in the order the Buyer shall notify the Supplier and the following provisions shall apply:
- 8.3.1 all sums payable by the Buyer in relation to the missing Goods shall cease to become payable;
- 8.3.2 all sums paid by the Buyer in relation to the missing Goods shall be repaid by the Supplier immediately; and
- 8.3.3 the Buyer shall be entitled to claim damages from the Supplier for any losses caused to the Buyer as a result of the shortages.
- 8.4 If the Buyer so requests, the Supplier shall immediately replace damaged Goods or supply Goods which are missing at the Supplier's expense or the Buyer shall be entitled to cancel, without notice, the whole or any unexecuted part of the order and the rights referred to in clause 5.4 shall apply.
- 8.5 Where there is an excess of Goods in relation to the order, the Buyer may reject the excess Goods by notice in writing to the Supplier and the following provisions shall apply:
- 8.5.1 the Supplier shall collect the excess Goods from the Buyer at the Supplier's expense;
- 8.5.2 during the period between delivery of the Goods and collection by the Supplier, the Buyer shall not be liable for any loss or damage caused to the excess Goods; and
- 8.5.3 no sum shall be due to the Supplier for the excess Goods and in the event that sums are paid to the Supplier for the excess Goods, the Supplier shall repay such sums to the Buyer immediately.
- 8.6 The Buyer may accept excess Goods by notifying the Supplier of such acceptance and the price of the excess Goods shall be payable by the Buyer.
- 8.7 The Buyer's signature on any delivery note of the Supplier is evidence of the number of packages received only and not evidence of the correct quantity of Goods received or that the Goods are in a good condition or of the correct quality.
9. **SUPPLY OF SERVICES**
- 9.1 The Supplier warrants, represents and undertakes that:
- 9.1.1 all Services performed under this Agreement shall be performed with all due skill and care, in a good and workmanlike manner and otherwise in line with best practice within its industry ("**Best Industry Practice**");



- 9.1.2 the Supplier Personnel will possess the qualifications, professional competence and experience to carry out such Services in accordance with Best Industry Practice;
 - 9.1.3 it will ensure that the Services will conform with all descriptions, standards and specifications set out in any specification, and that any Deliverables shall be fit for any purpose that the Buyer expressly or impliedly makes known to the Supplier, and in this respect the Buyer relies on the Supplier's skill and judgment;
 - 9.1.4 it shall perform the Services in accordance with the Policies, in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including statutory instrument, orders, or regulations made under the said legislation) and any requirements imposed by the Buyer in connection with the performance of Services;
 - 9.1.5 it shall meet any performance dates for the Services specified in the Purchase Order or that the Buyer notifies to the Supplier and time is of the essence in relation to any of those performance dates;
 - 9.1.6 the Services will not in any way infringe or violate any Intellectual Property Rights, trade secrets or rights in proprietary information, nor any contractual, employment or property rights, duties of non-disclosure or other rights of any third parties; and
 - 9.1.7 it has full capacity and authority to enter into this Agreement and that it has or will obtain, at the Suppliers expense, prior to the commencement of the Services, any necessary licences, consents and permits required of it for the performance of the Services.
- 9.2 The Supplier shall provide the Buyer with such progress reports, evidence or other information concerning the Services as may be requested by the Buyer from time to time.
- 9.3 The Supplier shall be responsible for maintaining such insurance policies in connection with the provision of the Services as may be appropriate or as the Buyer may require from time to time.
10. **SUPPLIER PERSONNEL**
- 10.1 Nothing in this Agreement will render the Supplier's Personnel, an employee, agent or partner of the Buyer by virtue of the provision of the Services by the Supplier under this Agreement and the Supplier shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Supplier's Personnel. The Supplier agrees to indemnify the Buyer in respect of any claims that may be made by the relevant authorities against the Buyer in respect of tax demands or National Insurance or similar contributions relating to the provision of the Services by the Supplier or in respect of any of the Supplier's personnel whose employment is alleged to have transferred to the Buyer by operation of law pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 or otherwise.



- 10.2 The Supplier shall procure that the Supplier Personnel take all reasonable steps to safeguard their own safety and the safety of any other person who may be affected by their actions, and the Supplier agrees to indemnify and keep indemnified the Buyer from all and any liabilities, obligations, costs and expenses whatsoever arising from any loss, damage or injury caused to the Buyer or any third party by the Supplier Personnel.
- 10.3 The Supplier shall, and shall procure that the Supplier Personnel shall, comply with all applicable statutes, rules and regulations in providing the Services, including all immigration and employment requirements imposed by any applicable jurisdiction, and the Supplier shall indemnify and hold harmless the Buyer from damages arising out of any failure to do so.
11. **TERMINATION**
- 11.1 The Buyer may terminate this Agreement for any reason by giving the Supplier fifteen (15) days' prior written notice.
- 11.2 Without affecting any other right or remedy available to it, the Buyer may terminate this Agreement with immediate effect by providing written notice to the Supplier if:
- 11.2.1 there is a change of Control of the Supplier; or
 - 11.2.2 the Supplier commits a breach of clause 19.
- 11.3 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- 11.3.1 the other party commits a material breach of any term of the Agreement which breach is irremediable or if such breach is remediable fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
 - 11.3.2 the other party repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the terminating party's reasonable opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;
 - 11.3.3 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 11.3.4 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 11.3.5 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.

12. CONSEQUENCES OF TERMINATION

12.1 On termination of the Agreement, the Supplier shall immediately deliver to the Buyer all Goods and Deliverables whether or not then complete and return all Buyer Materials. If the Supplier fails to do so, then the Buyer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Agreement.

12.2 Termination or expiry of the Agreement shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

12.3 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.

13. INDEMNITY

13.1 The Supplier shall indemnify the Buyer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Buyer arising out of or in connection with:

13.1.1 any claim made against the Buyer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Buyer Materials);

13.1.2 any claim made against the Buyer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables; and

13.1.3 any claim made against the Buyer by a third party arising out of or in connection with the supply of the Goods, as delivered, or the performance of the Services.

13.2 This clause 13 shall survive termination of the Agreement.

14. LIMITATION OF LIABILITY

14.1 The restrictions on liability in this clause 14 apply to every liability arising under or in connection with the Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

14.2 Nothing in the Agreement limits any liability which cannot legally be limited, including liability for:

14.2.1 death or personal injury caused by negligence;

14.2.2 fraud or fraudulent misrepresentation; and

14.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

14.3 Subject to clause 14.2, the Buyer's maximum aggregate liability to the Supplier in respect of all losses, costs, claims, expenses, damages or causes of action arising under or in connection with the Purchase Order, breach of contract, breach of duty, tort (including but not limited to negligence), act or omission, by way of indemnity or otherwise, shall be limited to a sum not exceeding the total price paid for the Goods and/or Services.

15. **INTELLECTUAL PROPERTY RIGHTS**

15.1 The Supplier hereby assigns to the Buyer, with full title guarantee and free from all third-party rights, all Intellectual Property Rights in and to:

15.1.1 the Deliverables (unless specified otherwise in the Purchase Order for particular Deliverables); and

15.1.2 any Goods, work product or material supplied to the Buyer pursuant to this Agreement where the Purchase Order specifies that the Intellectual Property Rights in the same are to be so assigned to the Buyer.

15.2 The Supplier shall obtain waivers of all moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

15.3 The Supplier shall, promptly at the Buyer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Buyer may from time to time require for the purpose of securing for the Buyer all right, title and interest in and to the Intellectual Property Rights assigned to the Buyer in accordance with clause 15.1.

15.4 The Supplier grants the Buyer a fully paid-up, worldwide, irrevocable, non-exclusive, royalty-free non-transferable licence to use any other Intellectual Property Rights as are necessary for the purpose of Buyer receiving the benefit of the Goods and Services and of the Intellectual Property Rights assigned to the Buyer in accordance with clause 15.1.

15.5 The Buyer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to use any Buyer Materials to the Supplier for the term of the Agreement only and for the sole purpose of providing the Services to the Buyer.

15.6 The Supplier acknowledges that all rights in the Buyer Materials are and shall remain the exclusive property of the Buyer.

16. **CONFIDENTIALITY**

16.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information of the other party, except as permitted by clause 16.2.

16.2 Each party may disclose the other party's Confidential Information:

16.2.1 to a Group Company;

- 16.2.2 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 16; and
- 16.2.3 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 16.3 Neither party shall use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Agreement.
17. **DATA PROTECTION**
- 17.1 The following definitions apply in this clause 17:
- 17.1.1 **Controller, Processor, personal data, and processing** are as defined in the Data Protection Legislation.
- 17.1.2 **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
- 17.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 17 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 17.3 The parties each acknowledge and agree that they may need to process personal data relating to each party's representatives (in their respective capacities as Controllers) in order to (as appropriate): (a) administer and provide the Goods/Services; (b) request and receive the Goods/Services; (c) compile, dispatch and manage the payment of invoices relating to the Goods/Services; (d) manage the Agreement and resolve any disputes relating to it; and/or (e) respond and/or raise general queries relating to the Goods/ Services.
- 17.4 Each party shall process such personal data relating to each party's representatives for the purposes set out in clause 17.3 in accordance with (a) their respective privacy policies and (b) Data Protection Legislation. The parties acknowledge that they may be required to share personal data with their affiliates, Group Companies and other relevant parties, within the United Kingdom, in order to carry out the activities listed in clause 17.3, and in doing so each party will ensure that the sharing and use of this personal data complies with applicable Data Protection Legislation.
- 17.5 Where and to the extent that the Supplier may process personal data for and on behalf of the Buyer as part of the Services, the Supplier shall be deemed the Processor and the Buyer shall be deemed the Controller.

- 17.6 The Supplier shall comply with the obligations imposed upon a Processor under the Data Protection Legislation and shall co-operate with the Buyer and take all such action as are necessary to enable the Buyer to comply with its obligations under the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Buyer to breach any of its obligations under the Data Protection Legislation, expressly and without limitation:
- 17.6.1 the parties shall agree and document the nature of the processing in accordance with Article 28(3), and otherwise the Processor shall comply with the obligations set out in Article 28(2), (3), and (4) of the GDPR, any other duties as set out in the Data Protection Act 2018;
 - 17.6.2 no personal data shall be transferred outside the EEA without the express approval of the Buyer and such approval is subject to such further conditions or requirements of the Buyer;
 - 17.6.3 notification of any security breach, or breach of the Data Protection Legislation by the Processor shall be made promptly and no later than twenty-four (24) hours after the Processor became aware of such incident.
- 17.7 The Supplier shall indemnify and keep indemnified the Buyer and each of its Group Companies from and against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Buyer and each its Group Companies arising out of or in connection with claims and proceedings arising from any breach of the Supplier's obligations under this clause 17.
18. **AUDIT**
- 18.1 The Supplier shall maintain in accordance with generally accepted accounting principles, quality standards and industry practices, accurate and complete books and records, findings, metrics, and other documentation (both physical and electronic) as well as an inspection and process control system covering any Services and Deliverables provided hereunder that is necessary to enable the Supplier to demonstrate its full compliance with this Agreement and each Purchase Order (the "**Audit Materials**").
- 18.2 The Supplier acknowledges that Audit Materials encompass materials pertaining both to the Supplier's accounting and billing practices and its performance of its obligations under this Agreement, including, its compliance with the Policies and all applicable laws.
- 18.3 The Supplier shall retain the Audit Materials for the later of:
- 18.3.1 the term of this Agreement and for a period of three (3) years after termination of this Agreement;
 - 18.3.2 resolution of any dispute in which the Audit Materials are relevant; and
 - 18.3.3 any additional time required by any governmental, judicial, or regulatory authority (the "**Retention Period**").

- 18.4 At the Buyer's written request during the Retention Period, the Supplier shall allow the Buyer (directly and/or through third parties) to audit and inspect the Supplier's facilities and Audit Materials, as well as copy any documents that the Supplier has relating to the performance of the Supplier's obligations under this Agreement or other applicable legal requirements.
- 18.5 Adjustments in favour of the Buyer arising from any such audit shall be recognized as an adjustment of any future payment due to the Supplier, or, if no future payment is due to the Supplier, the Supplier shall promptly pay the amount of any such adjustment to the Buyer.
- 18.6 Each party shall bear its own costs and expenses associated with its own actions under this clause 18; provided however, if an audit reveals an overbilling or over-reporting of three percent (3%) or more, then the Supplier shall reimburse the Buyer for the cost of the audit.
- 18.7 The Buyer's access, inspections, and audits shall be conducted in a manner not to unduly interfere with the Supplier's operations.

19. **COMPLIANCE**

19.1 The Supplier shall:

19.1.1 comply, and ensure the Supplier Personnel comply, with the ABC Laws;

19.1.2 promptly notify the Buyer if it becomes aware of any actual or suspected breach of:

(a) this clause 19.1; or

(b) ABC Laws by any third party that is relevant to the Agreement; and

(c) provide the Buyer with any and all reasonable cooperation and assistance requested by the Buyer in connection with any investigation by the Buyer into compliance with this clause 19.1; and

19.1.3 record all transactions relating to the Agreement accurately in its financial books, records and statements.

19.2 In performing its obligations and exercising its rights under this Agreement, the Supplier shall:

19.2.1 comply with applicable laws relating to slavery and human trafficking, including the Modern Slavery Act 2015;

19.2.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015; and

19.2.3 including in its contracts with subcontractors and suppliers that are relevant to the Agreement anti-slavery and human trafficking provisions that are at least as onerous as those in this clause 19.2.

19.3 In performing its obligations and exercising its rights under this Agreement, the Supplier shall:



- 19.3.1 not engage in any activity, practice or conduct which would constitute either:
- (a) a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or
 - (b) a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017; and
- 19.3.2 establish, maintain and enforce its own policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person and to ensure compliance with this clause 19.3.
- 19.4 In performing its obligations and exercising its rights under this Agreement, the Supplier shall for any of its employees who provide a service to or on behalf of the Buyer:
- 19.4.1 pay all its employees aged 18 or over not less than the current real Living Wage rates; and
 - 19.4.2 increase the amount which it pays to affected employees by the same amount as any increase to the real Living Wage, within 6 months of the date on which any increase in the real Living Wage is officially announced; and
 - 19.4.3 notify all affected employees of the date of the next increase within one month of the official announcement, unless the employees have been previously notified about the date on which they will receive at least the increase in the real Living Wage.
- 19.5 The Supplier shall ensure that all of its contactors and third parties that are engaged in the provision of Goods and Services to the Buyer shall abide by clause 19.4.
- 19.6 The Supplier shall perform its obligations under the Agreement in line with all applicable laws and in compliance with any policies and procedures of the Buyer that are notified to the Supplier by the Buyer.
20. **NON-SOLICITATION**
- 20.1 The Supplier shall not (except with the prior written consent of the Buyer) directly or indirectly solicit or entice away (or attempt to solicit or entice away):
- 20.1.1 any person employed or engaged by the Buyer (other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the Buyer); or
 - 20.1.2 any client, customer, supplier, or other similar third party of the Buyer or any of its Group Companies that became known to the Supplier directly or indirectly as a result of the performance of this Agreement,
- at any time during the term of this Agreement or for a further period of 12 months after the termination or expiry of this Agreement.

21. RELATIONSHIP OF PARTIES

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

22. ASSIGNMENT AND SUBCONTRACTING

22.1 The Buyer may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Agreement. For the avoidance of doubt, any of the Group Companies of the Buyer may perform any of the Buyer's obligations or exercise any of the Buyer's rights under this Agreement.

22.2 The Supplier shall not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement without the prior written consent of the Buyer.

22.3 The Supplier may not subcontract any or all of its rights or obligations under the Agreement without the prior written consent of the Buyer. If the Buyer consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

23. SEVERABILITY

If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision of the Agreement is deemed deleted under this clause 23 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

24. WAIVER

Except as set out in clause 2.1, no failure or delay by a party to exercise any right or remedy provided under the 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.

25. NOTICES

25.1 Any notice to be given by either party to the other may be served by email, personal service or by post to the address of the other party given in the Purchase Order.

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

25.2.1 if delivered by hand, at the time the notice is left at the proper address;



- 25.2.2 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;
- 25.2.3 if sent by international post, at 9:00 am on the fourth Business Day after posting;
or
- 25.2.4 if sent by fax or email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

26. **THIRD PARTY RIGHTS**

Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

27. **ENTIRE AGREEMENT**

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.

28. **GOVERNING LAW AND JURISDICTION**

- 28.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 28.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.