

**Ocular Integration Limited**  
**Terms of Sale for Goods and Services**

## 1. INTERPRETATION

1.1. In this Contract the following words shall have the following meanings:

**Adverse Impact:** means;

- (a) a substantial change to the Supplier's ability to perform the Contract in accordance with its terms and the Law; or
- (b) a significant increase in the costs incurred by the Supplier in performing the Contract since the price for the Goods or Services was last agreed; or
- (c) a substantial adverse impact on the Supplier's ability to re-sell or commercially exploit the Goods or Services (within the terms of this Contract);

**Anti-Slavery Policy:** means the Supplier's anti-slavery policy as amended and updated from time to time by the Supplier and notified to the Customer (a copy of which is available on the Supplier's website) to ensure compliance with all applicable anti-slavery and human trafficking laws including (but not limited to) the Modern Slavery Act 2015;

**Brexit:** means the United Kingdom ceasing to be a member state of the European Union, regardless of which countries comprise the United Kingdom at such date;

**Brexit Trigger Event:** means any of the following events if directly caused by Brexit or any discussions, negotiations or any other steps taken by the United Kingdom government or a body in any other jurisdiction in anticipation of or related to preparation for Brexit:

- (a) a change in the Law or a new requirement to comply with any existing Law or existing Law ceasing to apply to a party; or
- (b) the imposition of, or a change to, a duty, tax or levy imposed on imports or exports of the Goods or Services or any raw materials or components used by the Supplier; or
- (c) the loss of, a change to or the imposition of, a new requirement for any licence or consent required by a party to perform the Contract or to commercially exploit the Goods or Services;

**Commencement Date:** has the meaning given in clause 2.4;

**Commercially Sensitive Information;** information relating to either the business affairs, customers, clients, suppliers, plans, operations, processes, product information, know-how, technical information, trade secrets, whether or not such information is specifically identified as being commercially sensitive in nature which belongs to either the Customer or the Supplier, which if unnecessarily disclosed pursuant to this Contract would cause either the Customer or the Supplier significant commercial disadvantage or material financial loss;

**Confidential Information:** means all confidential information relating to the business affairs, customers, clients, suppliers, plans, operations, processes, product information, know-how, technical information, designs, trade secrets, whether or not such information is specifically identified and marked as being confidential in nature and whether or not such information is contained in any software or otherwise, which belongs to either the Customer or the Supplier;

**Contract:** the contract (including any Order) between the Supplier and the Customer for the sale and purchase of the Goods and / or supply of the Services in accordance with the clauses contained herein;

**Customer:** the company who purchases the Goods and / or Services from the Supplier pursuant to an Order;

**Data Controller:** has the meaning set out in article 4 (7) GDPR as the same may be amended, repealed or replaced from time to time;

**Data Processor:** has the meaning set out in article 4 (8) GDPR as the same may be amended, repealed or replaced from time to time;

**Data Protection Legislation:** means the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) and the General Data Protection Regulations (2016/679) (**GDPR**) as amended and enforced in the United Kingdom from time to time and including where applicable, the guidance and codes of practice issued by the Information Commissioner;

**Data Subject:** an identified or identifiable living individual who is the subject of any Personal Data exchanged between the Supplier and the Customer pursuant to this Contract;

**Deliverables:** the deliverables set out in the Order produced by the Supplier for the Customer;

**Delivery:** has the meaning given to it in clause 4.6;

**Delivery Point:** the place where the delivery of the Goods is to take place as defined in clause 4.3;

**FOIA:** the Freedom of Information Act 2000, together with any guidance or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

**Force Majeure Event:** has the meaning given to it in clause 7.4;

**Goods:** the goods (or any part of them) as set out in the Order;

**Goods Specification:** the specification for the Goods, including any relevant plans or drawings that are agreed in writing by the Customer and are contained in an Order;

**Group:** in relation to either the Supplier or the Customer, 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, rights to inventions, copyright, moral rights, trademarks, service marks, business names, domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use and to protect the confidentiality of Confidential Information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or not and including all applications and rights to apply for and be granted, renewals or extensions thereof and all similar rights or forms which subsist or will subsist now or in the future in any part of the world;

**Law:** means any legal provision that a party must comply with including any;

- (a) law or subordinate legislation applicable in England and Wales within the meaning of section 21(1) of the Interpretation Act 1978;
- (b) enforceable EU right within the meaning of section 2 of the European Communities Act 1972; and / or
- (c) bye-law, regulation, order or code of practice, judgment of a court of law, or requirement of any regulatory body, whether in the United Kingdom or elsewhere;

**Licence:** a worldwide, non-exclusive, royalty free and revocable licence to use the Software and any associated Intellectual Property Rights, more particularly set out in Schedule 1;

**Order:** the Customer's purchase order for the supply of the Goods and / or Services including any attached Goods Specifications or Service Specifications as the case may be;

**Personal Data:** has the meaning set out in article 4 (1) GDPR as the same may be amended, repealed or replaced from time to time;

**Supplier:** Ocular Integration Limited, a company incorporated and registered in England and Wales under company number 05831231, whose registered office is at 3 Attenborough Lane, Chilwell, Nottingham, NG9 5JN;

**Services:** the services including the Deliverables supplied by the Supplier to the Customer as set out in the Services Specifications;

**Service Specification(s):** the description or specification for the Services provided in writing by the Supplier to the Customer; and

**Third Party Software:** computer software and programs produced by a third party and supplied to the Supplier as part of any Goods or Services subsequently offered by the Supplier to the Customer.

- 1.2 Any reference in this Contract to any provisions of a statute or a statutory instrument shall (unless otherwise specified) be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3 A reference to a party includes its successors and all permitted assignees.
- 1.4 A reference to writing or written includes email.
- 1.5 A reference to a 'holding company' or a 'subsidiary company' means a holding or a subsidiary (as the case may be) as defined in section 1159 Companies Act 2006.

## 2. FORMATION AND INCORPORATION

- 2.1. Unless otherwise agreed in writing, the Contract will be based upon these clauses to the exclusion of all other terms and conditions and all previous oral or written representations exchanged between the Customer and the Supplier.
- 2.2. The Order constitutes an offer by the Customer to purchase Goods and / or Services referred to in the Order in accordance with this Contract.
- 2.3. No terms or conditions endorsed upon, delivered with or contained in the Customer's Order or any other similar document will form part of the Contract simply as a result of a reference to such document in the Contract.
- 2.4. The Order placed by the Customer shall only be deemed to be accepted when the Supplier issues a written acknowledgement or acceptance of the Order at which time the Contract shall come into existence (**Commencement Date**).
- 2.5. The Customer must ensure that the terms of its Order and any applicable specifications are complete and accurate.
- 2.6. The Supplier will not be bound by any quotation given and shall have power to vary or withdraw a quotation at its discretion.
- 2.7. No order which the Supplier has accepted may be cancelled by the Customer except with the prior written agreement of the Supplier and on the strict proviso that the Customer shall,

notwithstanding any provision in clause 16, fully indemnify the Supplier against any losses, costs, damages, work done, charges and expenses undertaken, suffered or incurred by the Supplier prior to or as a result of, such cancellation.

### 3. DESCRIPTION

- 3.1. All drawings, descriptive matter, specifications and advertising issued by the Supplier (or the manufacturer of the Goods) and any descriptions or illustrations contained in the materials produced by the Supplier prior to the Commencement Date are issued or published to give an approximate idea of the Goods or Services described in them. Unless otherwise agreed by the Supplier they will form no part of the Contract and the Customer acknowledges that no reliance has been placed on them before deciding to place any Order.
- 3.2. The Supplier may make changes to the Goods Specification or Services Specification, design, materials or finishes of the Goods or the provision of the Services which are required to conform to any applicable safety or other statutory or regulatory requirements or which do not materially affect their quality or performance.

### 4. DELIVERY

- 4.1. The Supplier shall deliver the Goods to the Delivery Point.
- 4.2. The '**Delivery Point**' shall be;
  - 4.2.1 any specific location set out in the Order (other than the Supplier's place of business referred to in clause 4.2.3); or
  - 4.2.2 such other location as the Customer and the Supplier may agree in writing (notwithstanding any information contained in the Order); or
  - 4.2.3 the Supplier's places of business as set out in the Order.
- 4.3 Where the Delivery Point is the Supplier's premises under clause 4.2.3 above, the Customer shall arrange to collect the Goods from the Delivery Point within 10 Business Days of the Supplier notifying the Customer in writing that the Goods are ready for collection.
- 4.4 The quantity of any consignment of Goods as recorded by the Supplier upon the despatch from the Supplier's place of business to the Delivery Point shall be conclusive evidence of the quantity received by the Customer on delivery.
- 4.5 The Services will be performed at the place specified in the Customer's Order.
- 4.6 'Delivery' of the Goods is complete when;
  - 4.6.1 the Goods reach the Delivery Point; or
  - 4.6.2 (where a third party carrier is used to collect and / or transport the Goods to their next destination) the Goods are loaded onto the third party carrier's chosen mode of transportation regardless of whether the Goods have reached the Delivery Point or not.
- 4.7 Goods may be delivered by the Supplier to the Delivery Point before any specified delivery date upon giving reasonable advance notice to the Customer that the Goods are available for delivery.
- 4.8 The Goods shall be delivered to the Delivery Point by such methods as the Supplier thinks fit or by such methods which the Customer and the Supplier may agree in writing from time to time.

- 4.9 Specific dates quoted for the delivery of the Goods in an Order are estimates only and unless expressly stated otherwise in writing, the time of delivery is not of the essence. If no dates are specified in the Order, delivery will be made within a reasonable time.

## 5 **NON DELIVERY**

- 5.1. The Supplier will not be liable to the Customer for any losses (direct or indirect) howsoever caused (including as a result of negligence) by any delay in the delivery of the Goods or performance of the Services (subject always to clause 16.1).
- 5.2. If the Supplier fails to deliver the Goods or Services pursuant to clause 4, its liability shall be limited to the costs and expenses reasonably incurred by the Customer in obtaining replacement goods of similar description and quality from the Supplier, less the price of the Goods or Services originally ordered.
- 5.3. The Supplier shall have no liability for any failure to deliver the Goods or Services to the extent that such failure is caused by;
- 5.3.1 a Force Majeure Event;
  - 5.3.2 the Customer's failure to provide the Supplier with adequate delivery instructions relating the Goods or Services; or
  - 5.3.3 the inability of the Supplier to gain access to or subsequently install any Software onto, a computer program, network or software that belongs to, is used by or is under the control of the Customer (including any of the Customer's agents or authorised representatives).
- 5.4 Where the Goods are otherwise being delivered to a Delivery Location other than the Supplier's place of business, the Supplier shall (subject to clause 16.1) not be liable for any non-delivery or late Delivery of the Goods (even if caused by the Supplier's negligence) unless written notice is given by the Customer to the third party carrier and the Supplier within two (2) Business Days of the date when the Goods would in the ordinary course of events have been delivered.
- 5.5 A signature of qualified acceptance on a carrier's delivery note shall not be written notice to either the third party carrier or the Supplier for the purposes of this Contract.
- 5.6 If the Customer fails to accept delivery of any of the Goods or fails to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered on time (except because of the Supplier's fault);
- 5.6.1 risk in the Goods will still pass to the Customer (including for loss or damage caused by the Supplier's negligence) on Delivery;
  - 5.6.2 the Goods will be deemed to have been delivered to the Delivery Point or the Services deemed to have commenced;
  - 5.6.3 the Supplier is still entitled to charge the Customer in respect of any Services done in respect of the Order or Goods supplied to the Customer up to the point at which the Goods were to be delivered pursuant to clause 4; and
  - 5.6.4 the Supplier may store or arrange for the storage of Goods until actual Delivery or sale and charge the Customer for all related costs and expenses (including storage and insurance) incurred as a result.
- 5.7 Without prejudice to any other rights contained in this Contract and subject to any agreement to the contrary, if after ten (10) Business Days the Customer has not taken delivery of the Goods, the Supplier may sell or arrange to sell any part of the Goods at the best price reasonably obtainable in the circumstances to any third party.

- 5.8 To the extent that the price achieved for any sales under clause 5.7 falls below the price as set out in the Order the Customer shall reimburse the Supplier for any shortfall between the two prices.
- 5.9 Containers and packaging materials supplied to the Customer by the Supplier may be returned to the Supplier. If this occurs the Supplier reserves the right to charge back to the Customer the reasonable costs incurred by the Supplier in disposing of or processing the containers and packaging materials.

## **6 SOFTWARE**

- 6.1 In so far as any Goods contain any software or other programs owned by the Supplier, the Supplier will on delivery of the Goods grant to the Customer the Licence to use such software and programs subject to the Customer complying with its other obligations in the Contract on the terms as set out in Schedule 1.
- 6.2 Where any Goods contain any Third Party Software that is licenced to the Supplier by a third party, the Customer will;
  - 6.2.1 enter into any third party licence agreements that the Supplier may be required to enter by the relevant licensor of the Third Party Software;
  - 6.2.2 ensure that it will comply with all third party licence terms covering the Third Party Software that may fall under clause 6.2.1 above; and
  - 6.2.3 fully indemnify the Supplier on demand against all liability arising out of or in connection with any breach by the Customer of any third party licences including but not limited to a failure to pay, a delay in performing, or negligence performance or non-performance of any of those third party licence terms.
- 6.3 In respect of any Third Party Software or other programmes or software belonging to the Supplier or a third party as referred to in clauses 6.1 and 6.2 the Customer will not;
  - 6.3.1 reverse engineer, compile, copy or adapt the whole or any part of the software or programmes;
  - 6.3.2 make any back-up copies of the software or programs; or
  - 6.3.3 remove or alter any copyright or other proprietary notice on any of the software or programmes.

## **7 FORCE MAJEURE**

- 7.1 The Supplier shall not be in breach of this Contract nor shall they be liable to the Customer because of any failure to perform or any delay in performing their obligations under the Contract if the delay or failure was due to any Force Majeure Event which either prevents or significantly delays the Supplier from performing their obligations in this Contract.
- 7.2 If the circumstances set out in clause 7.1 arise, the Supplier shall be entitled to a reasonable extension of the time for performing their obligations contained herein.
- 7.3 If the period of delay or non-performance continues for six (6) consecutive weeks either party may terminate this Contract by serving not less than ten (10) Business Days advance written notice on the other. Termination by either party under this clause 7.3 is made without prejudice to the rights or remedies available that have accrued up to the point of termination.

- 7.4 Without prejudice to the generality of clause 7.1 any one or more of the following shall be regarded as a '**Force Majeure Event**';
- 7.4.1 government actions relating to war or threat of war, national emergency, riot, civil disturbance, acts of domestic or international terrorism, sabotage or requisition;
  - 7.4.2 a cyber-attack (including but not limited to virus attacks or deliberate use of any form of malware, ransomware, phishing, spyware, 'Trojan Horse' viruses or any form of 'denial-of-service' attacks) perpetrated by a third party upon the computer systems of either Supplier or the Customer provided always that the Supplier or Customer had installed the latest available firmware and/or security or firewall updates on their computer systems at the time of the attack;
  - 7.4.3 an act of God, fire, explosion, flood or epidemic or pandemic;
  - 7.4.4 any unexpected change to the import or export regulations relating to the Goods or any embargoes placed upon the Goods;
  - 7.4.5 labour disputes including disputes involving the Supplier's workforce; or
  - 7.4.6 the inability to obtain or a delay in obtaining, supplies of adequate or suitable material, fuel, parts, machinery or labour necessary for the Supplier to perform its obligations under this Contract.
- 7.5 Nothing in this clause 7 shall be deemed to reduce or prevent the Supplier or the Customer from using their reasonable endeavours to re-commence performing their obligations, notwithstanding the existence of any ongoing Force Majeure Event, so long as it remains safe to do so.

## **8 RISK AND TITLE**

- 8.1 The risk in and responsibility for the Goods shall pass to the Customer on completion of Delivery (or deemed delivery under clause 5.6) by the Supplier to either;
- 8.1.1 the Delivery Point; or
  - 8.1.2 the Supplier's chosen carrier.
- 8.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods which has become due pursuant to the Order and the terms of this Contract. Title to the Goods shall only pass to the Customer once the Supplier is holding cleared funds.
- 8.3 The Customer may resell or use the Goods in the ordinary course of its business before title has passed to it under clause 8.2, subject to the following conditions:-
- 8.3.1 in the course of such re-sale, the Customer is acting as principal and not as the Supplier's agent;
  - 8.3.2 any sale shall be effected at full market value and the Customer shall promptly account for any sums due to the Supplier within 5 Business Days upon being paid itself; and
  - 8.3.3 title to the Goods shall pass to the Customer immediately before the time at which resale by the Customer occurs.
- 8.4 Until title to the Goods has passed to the Customer, the Customer shall:-
- 8.4.1 hold the Goods on a fiduciary basis as the Supplier's bailee;

- 8.4.2 store the Goods (at no cost to the Supplier) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Supplier's property;
  - 8.4.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - 8.4.4 maintain the Goods in satisfactory condition insured on the Supplier's behalf for their full price against all risks to the reasonable satisfaction of the Supplier. On request the Customer shall produce the policy of insurance to the Supplier.
- 8.5 The Customer's right to possession of the Goods and the right to re-sell the Goods shall each terminate immediately if:-
- 8.5.1 the Supplier serves written notice on the Customer terminating their right to use and sell the Goods;
  - 8.5.2 if any of the circumstances set out in clause 17.1 occur; or
  - 8.5.3 the Customer pledges or in any way charges any of the Goods as security to any third party other than the Customer.
- 8.6 The Supplier shall be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from the Supplier.
- 8.7 If the Customer's right to possession of the Goods has terminated under clause 8.5 above then;
- 8.7.1 the Supplier may at any time require the Customer to deliver up all Goods in its possession which have not been sold or irrevocably incorporated into another product; and
  - 8.7.2 if the Customer does not deliver up the Goods to the Supplier under clause 8.7.1 above, the Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or where the Customer's right to possession has terminated, to recover them.

## **9 PRICE**

- 9.1 The price for the Goods shall be the same as the Supplier's quoted price for the Goods as set out in the Order and is exclusive of any VAT (or other applicable taxes which may be due). Additional costs and charges in respect of packaging, insurance and transport of the Goods and any administrative banking charges or costs incurred by the Supplier as a result of processing any payments from the Customer, can at the discretion of the Supplier, either be added onto any invoice raised by the Supplier or can be invoiced to the Customer separately unless agreed otherwise
- 9.2 The charge for any Services provided to the Customer (if any) shall be the same as the Supplier's quoted price for the Services as set out in the Order.
- 9.3 The Customer accepts that the Supplier acting in its discretion is entitled to charge overtime on a pro-rata basis in respect of any time spent delivering the Services that exceeds the time and cost allowances that comprise the initial price for the Services. The rate of overtime shall be based on any hourly rates used to calculate the initial prices agreed for the Services.
- 9.4 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals and / or engineers to whom the Supplier entrusts with the completion of the Services. Such expenses will include (but are not limited to) travelling expenses, hotel costs,



subsistence and any other associated expenses with the provision of the Services to the Customer.

9.5 The Supplier reserves the right to;

- 9.5.1 increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date;
  - 9.5.1.1 in line with the average percentage increase in either the Retail Prices Index or the Consumer Price Index published by the Office of National Statistics in the preceding twelve (12) month period; or
  - 9.5.1.2 in line with the latest official average rate of inflation as published by the Office of National Statistics with such increase taking effect on the anniversary of the Commencement Date; or
  - 9.5.1.3 as a result of any circumstances happening between the Commencement Date and the anniversary thereof, which fall under clause 9.5.3.1 below;
- 9.5.2 increase the price for the Goods or the charges for the Services if any number of the assumptions in clause 9.7 are incorrect (as the case may be);
- 9.5.3 increase the price of the Goods, by giving notice to the Customer at any time before Delivery (or deemed delivery), to reflect any increase in the cost of Goods to the Supplier that is due to;
  - 9.5.3.1 any factor beyond the reasonable control of the Supplier whether arising before or after the Commencement Date;
  - 9.5.3.2 any request made by the Customer to change the delivery dates, quantities or type of Goods previously ordered by the Customer;
  - 9.5.3.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions; or
  - 9.5.3.4 a Brexit Trigger Event which has an Adverse Impact upon the Supplier.

9.6 Where the delivery is other than to the Supplier's premises the Supplier may in its' discretion charge the Customer for any export duties, transport, packaging, loading, unloading and insurance costs in addition when it is due to pay for the Goods.

9.7 In calculating the price for the Goods and / or the Services (as the case may be) the Supplier has made the following assumptions;

- 9.7.1 that the Services will be carried out at the Customer's premises during normal working hours and that a continuity of work schedule is assured;
- 9.7.2 that the Supplier will be advised prior to the acceptance of any Order by the Customer of any restrictions or conditions which may adversely affect access or cause additional labour time or unusual hours of work to be incurred;
- 9.7.3 that all necessary civil works at the Customer's premises necessary to enable the Supplier to install the Goods and / or provide the Services will be undertaken by others;
- 9.7.4 that all appropriate supplies of electricity necessary to enable the Supplier to install the Goods and / or provide the Services will be made available; and
- 9.7.5 that there are no hidden or unusual circumstances which may affect the provision of the Services which were not previously notified to the Supplier prior to the acceptance of any Order.

## 10 PAYMENT

- 10.1 The Supplier may invoice the Customer for the Goods at any time after Delivery and may invoice the Customer for the Services at any time after performance of the Services commences.
- 10.2 Time for payment shall be of the essence.
- 10.3 Unless otherwise agreed, payment of the price for the Goods or the charge for the Services is due not later than 30 days from the date upon which the Supplier's invoice is dispatched to the Customer.
- 10.4 No payment shall be deemed to have been received until the Supplier is holding cleared funds.
- 10.5 All payments payable to the Supplier under the Contract shall become due immediately upon termination of the Contract (for any reason), notwithstanding any other provision to the contrary.
- 10.6 All amounts due under this Contract shall be paid in full without any set-off, counterclaim or withholding rights that the Customer may have (now or in the future) pursuant to either;
- 10.6.1 the laws of England and Wales; and
  - 10.6.2 any other jurisdiction in which the Customer is based or has a domiciliary address (other than in respect of any deduction or withholding of tax as required by law).
- 10.7 The Supplier may in its discretion appropriate any payment made by the Customer to the Supplier to such of the invoices for the Goods or the Services as the Supplier thinks fit.
- 10.8 If the Customer fails to make any payment under this Contract on the due date then (without prejudice to its other rights and remedies) the Supplier may charge the Customer interest (both before and after judgement) on the amount unpaid at the annual rate of 8% above the Bank of England's published base rate from time to time until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest) and the Supplier will be entitled to suspend the delivery of or operation of the Goods or performance of the Services until the outstanding amount has been received by the Supplier from the Customer.

## 11 CUSTOMER'S OBLIGATIONS

- 11.1 The Customer shall;
- 11.1.1 ensure that the terms of the Order (including any information in either the Goods Specification or the Service Specification (as applicable) are complete and accurate;
  - 11.1.2 co-operate with the Supplier in matters relating to the Services;
  - 11.1.3 provide the Supplier, its employees, agents, consultants and subcontractors with access to the Customer' premises and other facilities and all utilities as reasonably required by the Supplier to provide the Services (if required);
  - 11.1.4 provide the Supplier, its employees, agents, consultants and subcontractors with an accurate plan of the location where the Goods are to be installed and Services are to be provided (as the case may be) showing all relevant utility service routes and any apparent obstacles which may affect the work of the Supplier;

- 11.1.5 obtain and maintain all necessary permits and consents, licences and permissions which may be required for the Supplier to deliver the Goods and perform any part of the Services;
  - 11.1.6 during the performance of any Services by the Supplier at the Customer's premises comply with all applicable laws, including any laws relating to the health and safety of the Supplier's employees, agents, consultants and sub-contractors that may be working onsite;
  - 11.1.7 keep all materials, equipment, documents and other property belonging to the Supplier located at the Customer's premises in safe custody, at its own risk and in good condition and shall not dispose of the same without the prior written consent of the Supplier;
  - 11.1.8 only allow trained operators to use and manage the Goods provided by the Supplier;
  - 11.1.9 ensure that the power supplied to devices and systems onsite is an uninterrupted power supply or will provide another suitable power source;
  - 11.1.10 back up any critical computer programmes and software systems on a regular basis and if necessary will make such back-ups available to the Supplier (or any sub-contractor) who are delivering Services to the Customer;
  - 11.1.11 if delivery of the Goods or provision of the Services requires the Supplier to make any visit(s) to any site, provide a safe working environment for the Supplier's employees, agents, consultants and sub-contractors attending those site(s). This obligation will be performed at no extra cost and will include providing all individuals with the necessary 'personal protective equipment' whilst attending any site and ensuring that all safe operating procedures or other site rules and processes have been clearly communicated to the employees, agents and sub-contractors of the Supplier (in the appropriate language);
  - 11.1.12 not deny or impede any access or attempted access to a site, by the Supplier (or their employees, consultants, agents or sub-contractors), without providing at least twenty-eight (28) days advance notice of any restricted access, which will explain why access has been restricted; and
  - 11.1.13 ensure that the Supplier can access the appropriate electrical feeds as detailed on a layout diagram, on the understanding that if the requested feeds or suitable electrical schematic to facilitate the location of such feeds are not provided, then the Supplier will be entitled to locate and terminate the required electrical supplies on site by itself, for which the Supplier can accept no liability.
- 11.2 If the Customer fails to satisfy the obligations set out in clause 11.1 (**Customer Default**);
- 11.2.1 the Supplier shall have the right to suspend performance of any of its obligations under this Contract until such time as the Customer remedies the Customer Default;
  - 11.2.2 the Supplier has the right to vary the Price to mitigate any changes to the costs or charges incurred by the Supplier as a result of the Customer Default;
  - 11.2.3 subject to clause 16.1 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising from the Supplier's failure or delay to perform its obligations under this Contract pursuant to clause 11.2.1; and

- 11.2.4 subject to clause 11.2.2, the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising from the Customer Default.

## 12 INTELLECTUAL PROPERTY RIGHTS

- 12.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 12.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to use and copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables.
- 12.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 12.2.
- 12.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

## 13 DATA PROTECTION

- 13.1 To the extent that either the Supplier or the Customer are processing Personal Data (**Data Processor**) belonging to the other (**Data Controller**), the Data Processor shall:
- 13.1.1 process the Personal Data only in accordance with any written instructions provided by the Data Controller, which may be specific instructions or instructions of a general nature as set out or required by this Contract or as otherwise notified by the Data Controller to the Data Processor;
- 13.1.2 implement appropriate technical, secure and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against loss, destruction, damage, alteration or disclosure of the Personal Data (accidental or otherwise), having regard to the state of the art, the costs of implementing the protective measures, the nature, scope, context and purposes for which the Data Processor is to process the Personal Data, as well as having regard to:
- 13.1.2.1 the ability of the Data Processor to anonymise the Personal Data;
- 13.1.2.2 the ability to ensure the Personal Data's ongoing confidentiality and integrity;
- 13.1.2.3 the ability for the Data Processor to restore any Personal Data; and
- 13.1.2.4 the processes required to test and evaluate the effectiveness of these measures;
- 13.1.3 provide the Data Controller with all reasonable assistance and support that allows the Data Controller to respond to and comply with, the terms of any information request sent from a Data Subject to a Data Controller in accordance with GDPR;
- 13.1.4 assist the Data Controller in ensuring their compliance with any of the obligations contained in article 32 to 36 GDPR (as amended from time to time);
- 13.1.5 upon receipt of a written request from the Data Controller or following termination of this Contract, delete or return all copies of any Personal Data previously received pursuant to the terms of this Contract to the Data Controller, save where any Personal Data must be retained by the Data Processor in accordance with any law, rule, court order or other legal obligation or duty;

- 13.1.6 ensure that any employee, agent or authorised representative has agreed to comply with the terms of this clause 13 and are aware of the confidential nature of the Personal Data received from the Data Controller;
  - 13.1.7 not cause or permit the Personal Data to be transferred to any territory outside of the European Union without first obtaining the express written permission of the Data Controller;
  - 13.1.8 following receipt of a reasonable written request from the Data Controller, provide such information and evidence as may be reasonably required to show that the Data Processor is complying with its obligations under this clause 13 and any Data Protection Legislation;
  - 13.1.9 immediately notify the Data Controller in writing (by providing sufficient details) of;
    - 13.1.9.1 any breach of the security measures required to be put in place to protect any Personal Data;
    - 13.1.9.2 any loss or potential loss of any Personal Data, arising from any breach of the security measures in place that are to protect the Personal Data;
  - 13.1.10 ensure it does not knowingly or negligently do or omit to do anything which places the Data Controller in breach of its obligations under the Data Protection Legislation;
  - 13.1.11 ensure that any third party (whether individual or body corporate) or sub-contractor that will process any piece of Personal Data previously supplied by the Data Controller to the Data Processor will;
    - 13.1.11.1 comply with the terms of this clause 13; and
    - 13.1.11.2 implement its own appropriate contractual, technical and organisational security measures so that the processing of any Personal Data performed by a third party will comply with all Data Protection Laws;
  - 13.1.12 in the event that any complaint is made by a Data Subject regarding the Data Processor's handling of that subject's Personal Data;
    - 13.1.12.1 provide the Data Controller with full details of the complaint;
    - 13.1.12.2 comply with any data access requests in accordance with the Data Protection Legislation, to the extent that it is able to; and
    - 13.1.12.3 provide the Data Controller with any information requested by the Data Controller;
  - 13.1.13 permit the Data Controller to inspect and audit the Supplier's data processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Data Controller to enable them to verify and/or procure that Data Processor is in full compliance with its obligations under this Contract; and
  - 13.1.14 upon request, provide a written description of the technical and organisational methods employed by Data Processor for processing Personal Data.
- 13.2 Each of the Supplier and the Customer agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 13.

- 13.3 The authority for any third party to process any Personal Data belonging to the Data Controller on behalf of the Data Processor shall terminate automatically when this Contract terminates.

#### 14. QUALITY OF GOODS

- 14.1. Unless otherwise agreed between the parties the Supplier warrants that for a twelve (12) month period following Delivery, the Goods shall be;
- 14.1.1 free from material defects in design, material and workmanship;
  - 14.1.2 of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - 14.1.3 fit for any purpose held out by the Supplier which is expressly made known to the Customer.
- 14.2. The Supplier shall not be liable for a breach of any of the warranties in clause 14.1 unless:-
- 14.2.1 the Customer gives written notice of the defect to the Supplier and (if the defect arises as a result of damage in transit) to the carrier within 7 days of:-
    - 14.2.1.1 the date of Delivery (where the defect would be apparent to the Customer upon a reasonable inspection); or
    - 14.2.1.2 the date when the Customer knew or ought reasonably to have known of the defect (where the defect would not be apparent to the Customer upon a reasonable inspection); and
  - 14.2.2 the Supplier is given a reasonable opportunity (after receiving the notice referred to above) to examine such Goods and the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business for the examination to take place there.
- 14.3. The Supplier shall not be liable for a breach of any of the warranties in clause 14.1 if;
- 14.3.1 the Customer makes any further use of such Goods after giving notice to the Supplier of any potential defect; or
  - 14.3.2 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 Goods or (if no instructions were provided) good trade practice; or
  - 14.3.3 the Customer (or other third party contractor) alters or repairs or attempts to repair such Goods without the written consent of the Supplier; or
  - 14.3.4 the defect in such Goods arises from any design defect in any drawing, design or specification supplied or approved by the Customer; or
  - 14.3.5 the defect arises as a result of;
    - 14.3.5.1 fair wear and tear caused by use of the Goods;
    - 14.3.5.2 wilful damage or negligence caused by the Customer; or
    - 14.3.5.3 the existence of any abnormal working conditions not previously known or communicated to the Supplier upon receipt of any Order; or
    - 14.3.5.4 the breach arises as a result of a Brexit Trigger Event.

- 14.4. If the Customer makes a valid claim against the Supplier under this clause 14 the Supplier shall at its option repair or replace the defective Goods or refund the price of the defective Goods in full to the Customer.
- 14.5. If the Supplier agrees to repair or replace or offers a refund for any defective Goods under this clause 14, the Customer, if requested by the Supplier, shall return the Goods or the part of such Goods which is defective to the Supplier.
- 14.6. At its discretion, the Supplier may refund to the Customer, the reasonable costs of transporting and arranging the return of, or subsequent deliveries of, the defective and / or repaired or replacement Goods as the case may be, providing always that the Customer shall, on request from the Supplier, provide documentary evidence of the costs incurred in the return or subsequently delivery of the Goods.
- 14.7. Except as provided in this clause 14 the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranties set out in clause 14.1.
- 14.8. Any Goods which have been replaced will belong to the Supplier until they have been paid for. Any repaired or replacement Goods will be liable to repair or replacement under the terms specified in clause 14.1 for the unexpired portion of the warranty period referred to in clause 14.1.

## **15. SUPPLY OF SERVICES**

- 15.1. The Supplier shall supply the Services to the Customer in accordance with any agreed Service Specifications in all material respects.
- 15.2. The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Service Specification but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 15.3. The Supplier reserves the right to amend the Services Specification if necessary to comply with any applicable law or regulatory requirement or if the amendment will not materially affect the nature or quality of the Services and the Supplier shall notify the Customer in any such event.
- 15.4. The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 15.5. The Supplier will not be liable for a breach of the warranty in clause 15.4 unless the Customer gives the Supplier written notice of any alleged non-compliance, provided that such notice is received within 10 Business Days from the date when the Customer discovers or ought reasonably to have discovered any alleged breaches of the warranty.

## **16. LIMITATION OF LIABILITY**

- 16.1. Nothing in this Contract excludes or limits the liability of the Supplier for;
- 16.1.1 death or personal injury caused by the Supplier's negligence (or that of its employees, agents or subcontractors);
- 16.1.2 fraud or fraudulent misrepresentation committed by the Supplier;
- 16.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982; and
- 16.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979.

- 16.2. All warranties, conditions and other terms implied by statute or common law (including those implied by section 13 to 15 of the Sale of Goods Act 1979 and those implied by sections 3 to 5 of the Supply of Goods and Services Act 1982) are to the fullest extent permitted by law, excluded from the Contract.
- 16.3. Subject to clause 16.1 the Supplier's total liability to the Customer in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance of the Contract shall be limited to the price payable by the Customer for the Goods and / or Services pursuant to this Contract.
- 16.4. Subject to clause 16.1 the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence) for breach of statutory duty or otherwise, howsoever caused and arising under or in connection with the Contract for;
- 16.4.1 direct losses suffered by the Customer which includes (but is not limited to);
- 16.4.1.1 loss of profits;
  - 16.4.1.2 loss of agreements or contracts;
  - 16.4.1.3 pure economic loss;
  - 16.4.1.4 loss of or damage to goodwill;
  - 16.4.1.5 loss of use or corruption of any software, data or Confidential Information; and / or
- 16.4.2 any indirect or consequential losses suffered by the Customer.
- 16.5 Notwithstanding clause 16.1 the Customer shall indemnify the Supplier against all actions, proceedings, costs, losses, claims or demands in any way connected with the Contract that are brought against, threatened to be brought against or incurred or suffered by the Supplier save where the Supplier is solely responsible for such action, proceedings, costs, losses, claims or demands brought against, threatened to be brought against or incurred or suffered by the Supplier.
- 16.6 Nothing in this Contract shall be taken to restrict or limit a party's duty to mitigate any losses they may suffer as a result of a breach of this Contract by the other party.

## 17 TERMINATION

- 17.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect if;
- 17.1.1 the other party commits a material breach of its obligations under the Contract and (providing that such breach is capable of remedy) fails to remedy that breach within fifteen (15) Business Days after receipt of a notice in writing from the injured party requesting them to do so;
  - 17.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or other arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purposes of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the other party takes any steps or action in another jurisdiction, in connection with any analogous procedures in the relevant jurisdiction;
  - 17.1.3 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;
  - 17.1.4 one party reasonably anticipates that any one of the above set of circumstances is about to occur in respect of the other party; or



- 17.1.5 one party fails to pay any amount due under the Contract on the due date for payment.
- 17.2 Notwithstanding any other provision in this clause 17 if the Customer does not accept a variation to the Price under clause 9.5.3 the Supplier may, without affecting any other right or remedy available to it, terminate this Contract by giving the Customer not less than 20 Business Days notice subject to clause 17.3.
- 17.3 On termination of the Contract;
  - 17.3.1 the Customer shall immediately pay all of the Supplier's outstanding unpaid invoices (and interest accrued thereon). In respect of any Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
  - 17.3.2 the Customer shall return all of the Supplier's materials, Deliverables or Goods which have not been fully paid for.
- 17.4 If the Customer fails to comply with clause 17.3 the Supplier may enter the Customer's premises and take possession of the Goods which have been delivered to the Customer.
- 17.5 Termination of the Contract shall not affect the rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including any right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 17.6 Any provision of the Contract whose intention is to have effect after termination (or expiry) shall continue in full force and effect.
- 18 NOTICES**
- 18.1 All notices and demands to be served on either the Customer or the Supplier under the Contract must be in writing and delivered by hand or sent by pre-paid first class post or by other next working day delivery service to;
  - 18.1.1 the registered office or principal place of business of either the Customer or the Supplier; or
  - 18.1.2 to any address of either the Customer or the Supplier which is set out in any document that forms part of the Contract (including the Order); or
  - 18.1.3 such other address as may be notified by one party to another from time to time.
- 18.2 Notices and demands shall be deemed to have been received;
  - 18.2.1 if sent by pre-paid first class post or by other next working day delivery service, two Business Days after posting (exclusive of the day of posting);
  - 18.2.2 if delivered by hand, on the day of delivery; or
  - 18.2.3 if delivered by e-mail on 09:00am on the next Business Day.
- 18.3 Notices and demands addressed to the Supplier shall be marked for the attention of a Director.
- 18.4 This clause does not apply to the service of any proceedings or other documents in any legal action or where applicable, any other method of dispute resolution.

**19 GENERAL**

- 19.1 Each right of remedy of the Supplier under the Contract is reserved without prejudice to any other right of remedy the Supplier may have (whether under the Contract or not).
- 19.2 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the 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 and such deletion shall not affect the enforceability of the rest of the Contract.
- 19.3 The Contract constitutes the entire agreement between the Supplier and the Customer and supersedes and extinguishes all previous agreements, promises, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 19.4 Each party acknowledges that in entering the Contract it has not relied on and shall have no remedies in respect of any statement, representation, assurance or warranty that is not set out in the Contract. Neither party shall have any claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 19.5 Any variation to a term of this Contract or the provision of Goods and / or Services provided hereunder shall have no effect unless expressly agreed in writing and signed by the Supplier.
- 19.6 Failure by the Supplier to enforce or partially enforce any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 19.7 A waiver by the Supplier of any breach of the Contract by the Customer will not be construed as a waiver of any subsequent breach of the same or any other provision.
- 19.8 The Supplier may assign, licence or sub-contact all or any part of its rights or obligations under the Contract without the Customer's consent.
- 19.9 The Contract is personal to the Customer who may not assign, licence or sub-contact all or any of its rights or obligations under the Contract without the Supplier's prior written consent.
- 19.10 The Supplier and the Customer do not intend that any of the terms of the Contract will be enforceable by virtue of the Contracts (rights of Third Parties) Act 1999 by any person not a party to it.
- 19.11 Each party undertakes that it shall not at any time during the Contract and for a period of five years after termination of the Contract, disclose to any person any Confidential Information belonging to the other party, except as permitted by this Contract.
- 19.12 Notwithstanding clause 19.11 above, each party may disclose the other party's Confidential Information as follows;
- 19.12.1 to its employees, officers, representatives or advisors who need to know such information in order to carry out their obligations under the Contract (provided that such recipients of the Confidential Information agree to the terms of a confidentiality obligation in respect of the Confidential Information that is at least equal to that set out in clause 19.11); and
- 19.12.2 as may be required by law, by order of a court of competent jurisdiction or any governmental or regulatory body.

- 19.13 The Contract and any dispute or claim (including non-contractual 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 laws of England and Wales.
- 19.14 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this Contract.
- 19.15 Neither party shall use the Confidential Information for anything other than for the performance of their respective obligations under this Contract (and any associated document).
- 19.16 Unless expressly agreed otherwise between the parties, in respect of the Customer's obligations in this Contract, time shall be of the essence.

## 20 ETHICAL COMPLIANCE

- 20.1 In performing their obligations under this Contract the Supplier and the Customer shall;
- 20.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes and regulations from time to time in force including the Modern Slavery Act 2015;
  - 20.1.2 comply with the Anti-Slavery Policy;
  - 20.1.3 not engage in any activity or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015, if such activity, practice or conduct were carried out in the United Kingdom;
  - 20.1.4 not employ, have not employed and will not employ any individual who is under the age of sixteen (16) years of age (**Child**), regardless of whether any national or local laws to which the Supplier may also be subject, define a child as being younger than sixteen (16) years of age;
  - 20.1.5 include, when appropriate and where required by the Modern Slavery Act 2015, in its contracts with subcontractors and suppliers, suitable anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 20; and
  - 20.1.6 each undertake to the other, not to purchase or use or source any components or raw materials of Conflict Minerals (as defined in clause 20.11) (whether under this Contract or under any connected contract or arrangement) which have originated from (directly or indirectly) the Democratic Republic of Congo or any other Adjoining Territory (as defined in clause 20.11).
- 20.2 The Supplier and the Customer each represent and warrant to the other that at the date of this Contract:
- 20.2.1 neither they nor any of their officers, employees or other persons associated with them have been convicted of any offence involving slavery and human trafficking; and
  - 20.2.2 having made reasonable enquiries, so far as they are aware have not been and are not currently the subject of any investigation or other enforcement proceedings by any governmental or other regulatory body regarding any offence arising in connection with slavery and human trafficking.
- 20.3 The Supplier shall implement reasonable procedures and protocols to ensure that there is no slavery or human trafficking in its supply chains.
- 20.4 Either party shall notify the other as soon as it becomes aware of any actual or suspected

breach of clause 20.1 above or any actual or suspected slavery or human trafficking in another supply chain that is connected (directly or indirectly) to this Contract.

- 20.5 For each 12 month period that this Contract has been in force (from the Commencement Date) each of the Supplier and the Customer shall prepare and deliver an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in its supply chains or within any part of its business.
- 20.6 Each of the Supplier and Customer shall;
- 20.6.1 maintain records to trace the supply chain of Goods and Services provided under this Contract;
- 20.6.2 permit each other upon receipt of an advance written notice to have access to and take copies of any records maintained pursuant to this clause 20; and
- 20.6.3 implement annual audits of its sub-contractors' and suppliers' compliance with the Anti-Slavery Policy for each complete 12 month period running from the Commencement Date.
- 20.7 The Supplier hereby agrees to indemnify the Customer against any losses, liabilities, damages or costs (including reasonable legal fees) and expenses incurred by (or awarded against) the Customer as a result of any breach of this clause 20 by the Supplier.
- 20.8 The Customer hereby agrees to indemnify the Supplier against any losses, liabilities, damages or costs (including reasonable legal fees) and expenses incurred by (or awarded against) the Supplier as a result of any breach of this clause 20 by the Customer.
- 20.9 Notwithstanding any other clause in this Contract, either party may terminate the Contract with immediate effect by giving written notice to the other party, if the other party commits a breach of clause 20.1.
- 20.10 Each of the Supplier and the Customer shall use their reasonable endeavours to procure that any companies in a Group, of which they are also a member will comply with the terms and spirit of this clause 20.
- 20.11 In this clause 20 the following words shall have the following meanings;
- 20.11.1 **'Adjoining Territory'** means any country that shares an internationally recognised border with the Democratic Republic of Congo; and
- 20.11.2 **'Conflict Minerals'** means any mineral or their derivative (including but not limited to gold) determined by the Foreign and Commonwealth Office to be financing any conflict in the Democratic Republic of Congo or any Adjoining Territory.

## 21 ANTI BRIBERY

- 21.1 Each of the Supplier and the Customer shall;
- 21.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including the Bribery Act 2010;
- 21.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
- 21.1.3 have and shall maintain in place throughout the term of the Contract its own policies and procedures, including adequate procedures under the Bribery Act

2010, to ensure compliance with the relevant requirements and will enforce them where appropriate;

- 21.1.4 promptly report to the other, any request or demand for any undue financial or other advantage of any kind received in connection with the performance of this Contract;
  - 21.1.5 immediately notify the other party (in writing) if a foreign public official becomes an officer or employee of the Supplier or the Customer and acquires a direct or indirect interest in either the Supplier or the Customer (and each of the Supplier and the Customer warrant that they have no foreign public officials as officers or employees or as direct or indirect owners at the date of this Contract); and
  - 21.1.6 starting from the Commencement Date and annually thereafter, certify to the other party in writing signed that they have complied with this Clause 21. Each party shall provide such supporting evidence of compliance with this clause 21 to the other, as they may reasonably request.
- 21.2 The Supplier shall use their reasonable endeavours to ensure that any person who is performing services or providing goods in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Clause 21.
- 21.3 Breach of this Clause 21 shall be deemed a material breach, which is irremediable, under Clause 17.
- 21.4 For the purpose of this Clause 21, the meanings of 'adequate procedures' and 'foreign public official' shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 21 a person associated with the Supplier includes any subcontractor of the Supplier.
- 21.5 Each of the Supplier and the Customer shall use their reasonable endeavours to procure that any companies in a Group, of which they are also a member will comply with the terms and spirit of this clause 21.

## **22 ANTI FACILITATION OF TAX EVASION**

- 22.1 Each of the Supplier and the Customer shall and shall procure that any companies in a Group of which they are a member, or any persons associated with them who are performing any services on their behalf under this Contract will;
- 22.1.1 not engage in any activity, practice or conduct which would constitute;
    - 22.1.1.1 a tax evasion offence under section 45 (1) Criminal Finances Act 2017; or
    - 22.1.1.2 a foreign tax evasion facilitation offence under section 46 (1) Criminal Finances Act 2017;
  - 22.1.2 not do, or omit to do any act that will cause or lead either the Supplier or the Customer to breach any part of the Criminal Finances Act 2017; and / or
  - 22.1.3 report any request from a third party to facilitate the evasion of tax in any jurisdiction within the meaning of Part 3 Criminal Finances Act 2017; and
  - 22.1.4 have and shall maintain throughout the term of this Contract, such policies and procedures as are reasonable to prevent the facilitation of tax evasion and to ensure compliance with this clause 22.

22.2 Breach of this clause 22 shall be deemed a material breach under clause 17.1 of this Contract.

## 23 **NON SOLICITATION**

23.1 So long as this Contract remains in force between the Supplier and the Customer and for a period of six (6) months following the termination or completion of the Contract, neither the Supplier or the Customer shall, directly or indirectly, by or through itself or any agent or third party, whether for its own benefit or for the benefit of any other person;

23.1.1 solicit, entice, induce or endeavour to solicit, entice or induce any employee or other representative of the other party with a view to employing or engaging any employee or other representative of the other party on any other terms; or

23.1.2 employ or engage or offer to employ or engage any employee or other representative of the other party,

without the prior written consent of the other party.

23.2 Nothing in clause 23.1 shall prevent or restrict any employee or other representative of the Customer or the Supplier from responding directly to a bona fide advertisement or recruitment drive adopted by the other party (provided in any medium).

23.3 The provisions of this clause 23 shall be without prejudice to a party's ability to seek damages or claim injunctive relief from the other party, in the event of a breach of clause 23.1.

## 24 **FREEDOM OF INFORMATION**

24.1 This clause 24 shall only apply where the Customer is a public authority or body that is subject to the provisions of the FOIA.

24.2 Where the Customer is subject to the requirements of the FOIA, the Supplier shall;

24.2.1 provide all necessary assistance and cooperation reasonably required by the Customer to enable the Customer to comply with its obligations under the FOIA;

24.2.2 transfer to the Customer any Request For Information relating to this Contract that will fall under the FOIA, as soon as is reasonably practicable for the Supplier to do so;

24.2.3 provide the Customer with a copy of all information belonging to the Customer referred to in the Request For Information which is in its' possession or control in a form reasonable required by the Customer within 20 Business Days of receiving the Customers' request for such information; and

24.2.4 not respond directly to a Request For Information made pursuant to the FOIA unless authorised in writing to do so by the Customer.

24.3 The Supplier acknowledges that the Customer may be required under the FOIA to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Customer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA.

- 24.4 Unless the Customer is explicitly and directly required to disclose Commercially Sensitive Information belonging to the Supplier pursuant to the FOIA, the Customer will use their best endeavours to ensure that their response to a Request For Information does not include any Commercially Sensitive Information.
- 24.5 Notwithstanding any other term of this Contract, the Supplier consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.
- 24.6 The Customer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions. The Supplier shall assist and co-operate with the Authority to enable the Customer to publish this Contract if required, provided always that the reasonable costs incurred by the Supplier in complying with this clause 18, will be met by the Customer.

## Schedule 1

### Software Licence

- (A) The Customer has agreed to purchased Goods and / or Services from the Supplier which includes Program Materials (as defined below).
- (B) In connection with such purchase, the Supplier has agreed to grant a licence to the Customer to use the Program Materials subject to the term of this licence (**Licence**).
- (C) Defined terms used in this Licence but which are not set out in paragraph 1.1 below, shall have the same meaning as those set out in clause 1.1 of the Contract.

#### 1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Licence the following words shall have the following meanings;

**Derived Products:** any computer programs that use the Program Materials or modifications of the Program Materials;

**Licensee:** the Customer;

**Program Materials:** the set of computer software programs and machine readable and printed materials (including any upgrades, modified versions or updates) supplied, directly or indirectly by the Licensor to the Licensee excluding any Software belonging to a third party or which is classed as open source software;

**Licensor:** the Supplier; and

**Open Source Software:** third party software code which is supplied with and incorporated into any Program Materials or Derived Products or Third Party Software which is licensed upon terms which generally conform to the open source definition set by The Open Source Initiative from time to time.

#### 2. GRANT OF LICENCE

- 2.1. The Licensor grants to the Licensee a nonexclusive, revocable, limited sub-licence to use the Program Materials and Derived Products on the number of computers as specified in the Order along with the Goods purchased pursuant to the Contract and any other equipment, systems and hardware purchased by the Licensee.
- 2.2. The use of Program Materials and/or Derived Products on additional computers beyond the number specified in the Order requires additional Licence(s) from the Licensor. The Program Materials and Derived Products may be copied only for backup purposes.

#### 3. COPYRIGHT AND TITLE

- 3.1. The Program Materials and all Intellectual Property Rights associated with the Program Materials are owned by the Licensor. The Licensee shall treat the Program Materials like any other copyrighted materials, except as otherwise provided in the Contract or pursuant to paragraph 2.2 regarding the ability to copy the Program Materials or Derived Products solely for backup purposes. All copies of the Program Materials shall display all copyright notices included in the original Program Materials.



#### **4. RESTRICTIONS**

##### 4.1. The Licensee shall not;

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